No. 17-8995	
Title:	Jason J. Mont, Petitioner v. United States
Docketed:	May 18, 2018
Lower Ct:	United States Court of Appeals for the Sixth Circuit
Case Numbers:	(17-3732)
Decision Date:	February 15, 2018
Questions Presented	

DATE	PROCEEDINGS AND ORDERS
May 15 2018	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due June 18, 2018) **Motion for Leave to Proceed in Forma Pauperis** **Petition** **Appendix** **Appendix** **Proof of Service**
Jun 13 2018	Motion to extend the time to file a response from June 18, 2018 to July 18, 2018, submitted to The Clerk. **Main Document**
Jun 14 2018	Motion to extend the time to file a response is granted and the time is extended to and including July 18, 2018.
Jul 11 2018	Motion to extend the time to file a response from July 18, 2018 to August 17, 2018, submitted to The Clerk. **Main Document**
Jul 12 2018	Motion to extend the time to file a response is granted and the time is further extended to and including August 17, 2018.
Aug 13 2018	Motion to extend the time to file a response from August 17, 2018 to September 17, 2018, submitted to The Clerk. **Main Document**
Aug 13 2018	Motion to extend the time to file a response is granted and the time is further extended to and including September 17, 2018.
Sep 17 2018	Brief of respondent United States in opposition filed. **Proof of Service** **Main Document**
Oct 01 2018	Reply of petitioner Jason Mont filed. (Distributed) **Main Document** **Proof of Service**

Oct 04 2018	DISTRIBUTED for Conference of 10/26/2018.
Oct 29 2018	DISTRIBUTED for Conference of 11/2/2018.
Nov 02 2018	Motion to proceed in forma pauperis and petition for a writ of certiorari GRANTED.
Dec 17 2018	Joint appendix filed. (Statement of costs filed) **Main Document** **Proof of Service**
Dec 17 2018	Brief of petitioner Jason Mont filed. **Main Document** **Other** **Proof of Service** **Certificate of Word Count**
Dec 21 2018	SET FOR ARGUMENT for Tuesday, February 26, 2019.
Jan 11 2019	Record requested from the U.S.C.A. 6th Circuit.
Jan 11 2019	Record from the U.S.C.A. 6th Circuit is available both on PACER and electronic.
Jan 15 2019	CIRCULATED
Jan 16 2019	Brief of respondent United States filed. (Distributed) **Proof of Service** **Main Document**
Feb 14 2019	Reply of petitioner Jason Mont filed. (Distributed) **Main Document** **Certificate of Word Count** **Proof of Service**
Feb 26 2019	Argued. For petitioner: Vanessa F. Malone, Akron, Ohio. For respondent: Jenny Ellickson, Assistant to the Solicitor General, Department of Justice, Washington, D. C.

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No.

In the

Supreme Court of the United States

JASON J. MONT

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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May 15, 2018

QUESTION PRESENTED

Whether a statute directed to the administration of imprisoned individuals serves as authority to alter or suspend the running of a criminal sentence of supervised release, when such "tolling" is without judicial action, and requires the term "imprisonment" as used in the administrative statute, to include pretrial detention prior to an adjudication of guilt. Is a district court required to exercise its jurisdiction in order to suspend the running of a supervised release sentence as directed under 18 U.S.C. §3583(i) prior to expiration of the term of supervised release, when a supervised releasee is in pretrial detention, or does 18 U.S.C. §3624(e) toll the running of supervised release while in pretrial detention?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jason J. Mont respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case. This case represents a clear divide within the courts of appeals as to the interpretation and application of 18 U.S.C. §3624(e) to causes where a supervised release violation is contemplated based upon a releasee's conduct, but that releasee is being held in pretrial detention based upon an unrelated charge. The Sixth Circuit, along with the Fourth, Fifth, and Eleventh Circuits view pretrial detention as "imprisonment" for purposes of applying the alleged tolling provision of §3624(e), and finc' it unnecessary for the district court to follow the jurisdictional requirements under 18 U.S.C. §3583(i) which allow for extending jurisdiction beyond the end of a supervised release sentence term were a summons or warrant is issued for the pending violation. The Ninth Circuit and the District of Columbia Circuit, however, view the term "imprisonment" in the present tense, and requires an actual imprisonment term as opposed to a pretrial detention term that is later credited to a prison term after conviction on the unrelated charge which was the basis of the pretrial detention.

The federal circuit courts are openly divided and steadfast in the belief that their reasoning is correct. As a consequence, sentences of supervised release which are nearing the end of their terms are being treated differently depending upon the part of the country a federal supervised releasee is being supervised. Without this court's intervention, the lack of a consistent and coherent interpretation of the word

"imprisonment" as used in 18 U.S.C. §3624(e) will continue to produce inconsistent and incompatible interpretation of clear statutory language, with clear implications as to how a district court exercises its jurisdiction depending upon the location of the court. This case squarely presents these important and recurring questions and is an ideal vehicle for resolving the split of authority. For these reasons, the petition should be granted.

OPINION BELOW

The opinion of the Sixth Circuit Court of Appeals, Appendix, 1a- 13a, was unpublished and issued February 15, 2018, and is attached hereto.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The Questions Presented implicates the following United States Code sections. The full text of these provisions have been set out in the Appendix.

> 18 U.S.C. § 3583. Inclusion of a term of supervised release after imprisonment
>
> (i) Delayed revocation.--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

18 U.S.C. §3624. Release of a Prisoner

(c) Supervision after release.--A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

STATEMENT OF THE CASE

A. Factual History of Supervised Release of Jason Mont

The facts involved in Petitioner Jason Mont's supervised release and the history of violation reports is not in dispute.

Jason Mont was released from the custody of the Bureau of Prisons on March 6, 2012, after serving a 120-month sentence for violations of 21 U.S.C. §841(a)(1) & (b)(1)(A) and §846, imposed by United States District Court Judge Patricia Gaughan on December 8, 2005. Mont began his five year supervised release sentence on March 6, 2012, and was supervised in the Northern District of Ohio.

During the term of supervised release, Mont's probation officer filed two violation reports and one supervision report, all of which served to notify the district court of the alleged violative activities of Mont. The first Violation Report, which was subtitled "Warrant/Summons Request" was dated January 28, 2016, after Jason Mont had been serving the supervised release portion of his sentence for almost four years. In the January 2016 Violation Report, it was noted that Mont was serving a five year supervised release term, which began on March 7, 2012. The January 2016 Report also requested a warrant to issue for Mr. Mont, based upon two alleged violations of his supervision: the first was an Unauthorized Use of Drugs violation; the second violation was for Adulterated Urine Samples. At the time of the January 2016 violation report, Mont was under indictment in Mahoning County, Ohio Common Pleas Court for marijuana drug trafficking. United States District Court Chief Judge Patricia Gaughan declined to issue the requested warrant. Notwithstanding the refusal to issue the warrant for Mont, Chief Judge Gaughan requested notification when the pending marijuana trafficking case in state court was concluded.

The next report from the probation officer was dated June 13, 2016, and was titled "Supervision Report," which was issued for informational purposes only, and requested continued supervision. The June 2016 Supervision Report updated the district court on the status of Jason Mont's Mahoning County drug case, and a recent arrest of Mont on a new drug trafficking indictment. Jason Mont had been arrested and held in pretrial detention on June 1, 2016, following a five count secret Indictment from Mahoning County, alleging violation of Ohio's drug trafficking statutes. Mont

would not be granted a bond on the new indictment, and from June 1, 2016 to the present, Jason Mont has been in the custody of the State of Ohio. The June 2016 supervision report did not ask for any judicial action, as it was a status report, used to keep the court abreast of the activities and supervision of Jason Mont.

Jason Mont pled guilty to the state consolidated cases, and thereafter filed in his 2005 federal case a concession which admitted his violations of supervised release, and requested a hearing to resolve the potential violations in November of 2016. The district court scheduled a hearing, but did not issue a summons, warrant, or writ for Mr. Mont, who was still being held in pretrial detention at Mahoning County Jail in Youngstown, Ohio. The scheduled hearing was continued on several occasions by the government, as counsel for the United States wanted to wait until Mr. Mont was sentenced on the state law crimes prior to any supervised release violation hearing. During this four month delay, no summons, warrant, or writ was filed by the government or the district court, and no violation report was filed or served until March 30, 2017.

The third Report generated by the United States probation officer was dated March 30, 2017, and was a Violation Report and Request for a Warrant. The March 2017 Report provided the district court with an update as to the status of the state court cases, as Mr. Mont had been sentenced on March 21, 2017 in Mahoning County Common Pleas Court, and was given credit for time served since his June, 2016 arrest on the second Mahoning County indictment. The Mahoning County cases had been consolidated, and Mr. Mont had received a six year concurrent sentence on the two

separate state court indictments. Jason Mont had not been held in pretrial detention for the first Mahoning County indictment dating back to 2015.

Judge Gaughan issued a warrant after the filing of the updated Report, on March 31, 2017. However, Mont's five year supervised release sentence, which had begun on March 6, 2012, had expired on March 7, 2017, over three weeks prior to the Violation Report, and 24 days prior to the issuance of the warrant based upon the violations. The district court refused to exercise jurisdiction over Mont prior to the expiration of the supervised release term, notwithstanding the violation reports filed and Mr. Mont's request for a hearing prior to the expiration of the sentence.

Mont filed a Memorandum in aid of Proceedings on Supervised Release Violation Hearing, which argued, among other things, that Mr. Mont's supervised release sentence had expired prior to the issuing of the warrant on March 31, 2017, and thus the district court lacked jurisdiction to adjudicate the alleged violations. At the June 28, 2017 supervised release violation hearing, the district court addressed the jurisdiction issue regarding the expired term of supervised release. The government averred that Mont caused the delay and Sixth circuit precedent cautioned that a defendant that causes a delay cannot benefit from the expiration of the sentence, which would not have expired absent the delay. The probation office opined that because an individual held in pretrial detention is not amenable to supervision, pretrial detention pauses, or stops the running of supervised release.

The district court decided to rely on a different justification for the alleged tolling of the supervised release term. The district court (incorrectly) stated that a

summons had been filed in November of 2016, and relied upon 18 U.S.C. §3583(i) in finding that the period between the plea of guilty to the state indictments until the June 28, 2017 hearing was time "reasonably necessary" to adjudicate the violations, as Mr. Mont had delayed his state court sentencing by seeking continuances of his state court sentencing hearing, and those delays were his own doing and thus caused the excusable delay. Therefore because of the summons and the delay caused by Mont, §3583(i) permitted the court to retain jurisdiction after the expiration of the supervised release sentence. The district court sentenced Mont to 42 months imprisonment, with no supervised release to follow. The sentence was imposed to run consecutively to the six year State of Ohio sentences for the two Mahoning County indictments.

B. The Decision Below

The Sixth Circuit Court of appeals affirmed the sentence and the district court's exercise of jurisdiction, albeit on a basis different than that espoused by the district court. The Court of Appeals stated that their prior published opinion in United States v. Goins, 516 F.3d 416 (6th Cir.2008) resolved the jurisdictional issue and foreclosed Mont's argument. The court held that under 18 U.S.C. §3624(e), "while a 'term of supervised release commences on the day the person is released from imprisonment, that term does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.' " Pet. App. 6a.

The appeals court identified both §3624(e) and 18 U.S.C. §3583(i) as "clock-pausing provisions" addressed in Goins, and in relying on that earlier 2008 decision,

stated the Goins holding, specifically, "when a defendant is held for thirty days or longer in pretrial detention, and he is later convicted for the offense for which he was held, and his pretrial detention is credited as time served toward his sentence, then the pretrial detention is "in connection with" a conviction and tolls the period of supervised release under § 3624," was controlling. Pet. App. 7a, citing, Goins, 516 F.3d at 417.

The Mont panel recognized that Goins, a published and binding decision, led the way for three other Courts of Appeals to follow suit, finding that 18 U.S.C §3624(e) is a tolling provision for a criminal sentence of supervised release. "Compare United States v. Ide, 624 F.3d 666, 667 (4th Cir. 2010) (holding that pretrial detention can qualify as imprisonment under § 3624(e)), United States v. Johnson, 581 F.3d 1310, 1312–13 (11th Cir. 2009)(same), United States v. Molina-Gazca, 571 F.3d 470, 471 (5th Cir. 2009)(same)." Pet. App 11a. The court then acknowledged the split in the circuit opinions as reflected in United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016), and United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999), which hold that pretrial detention is not "imprisonment" and thus §3624(e) does not toll the running of a sentence of supervised release for a pretrial detainee. Pet. App. 11a.

REASONS FOR GRANTING THE WRIT

The Sixth Circuit's unpublished decision in United States v. Mont, reflects a clear circuit split based upon differing statutory interpretations of 18 U.S.C. §3624(e), which requires resolution. The federal courts of appeals are firmly divided over the interpretation of the language of 18 U.S.C. §3624(e), the use of the word "imprisonment," and whether the backward-looking practice required to be performed by those circuits who adhere to the idea of tolling in §3624(e) is practicable or appropriate, given the clear manner in which jurisdiction over a supervised release case shgould be invoked as stated in 18 U.S.C. §3583(i). This case squarely presents this important and recurring question, and is an ideal vehicle for which this Court may answer the jurisdictional issue. This Court should therefore use this case to resolve the conflict in the circuit courts.

1. The Question Presented has Divided the Courts of Appeals

Half of the federal circuit courts have addressed the question presented and have reached opposite conclusions. The circuit courts have acknowledged the differing analysis, and serves as additional inspiration to resolve these percolating issues of jurisdiction and statutory interpretation. See, e.g., Pet. App. 11a ("What remains of Mont's argument amounts essentially to an attack on Goins itself and an endorsement of the D.C. Circuit's recent decision to the contrary, . . . That is fair enough: there is indeed a circuit split on this question."); United States v. Marsh, 829 F.3d 705, 707 (D.C. Cir. 2016)("Whether section 3624(e) tolls a term of supervised release during a period of pretrial detention where the defendant is ultimately convicted of the charges

on which he is held is a matter of first impression in this circuit. Five other circuits have, however, considered the issue and are split."). This Court's resolution is now warranted to provide clarity and focus to these differing statutory interpretations.

A. The District of Columbia and Ninth Circuits have both held that section 3624(e) does not toll a supervised release sentence as "imprisonment" does not include periods of pretrial detention

In United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999), the Ninth Circuit panel held that in the context of 18 U.S.C. §3624(e), pretrial detention is not "imprisonment" and thus any supervised release term would not be subject to tolling based upon the person's detention pending new charges. The Ninth Circuit pointed out that the terms "imprisonment" and "detention" are used differently in federal criminal statutes, with "imprisonment" referring to a penalty or sentence, and "detention" being used to describe a mechanism to insure a defendant's appearance and the safety of the community. Morales-Alejo, 193 F.3d at 1105. The Ninth Circuit rejected the government's attempt to equate sentence credits given at the time of sentencing for time spent in pretrial detention as being unsupported by the statutory language, and involving a type of "backward-looking" analysis not contemplated by Congress. In addition, in the federal context, pretrial credits are provided for by the Bureau of Prisons as part of the sentencing computation duties, and thus may not be know specifically until well after a judge pronounces sentence. Morales-Alejo, 193 F.3d at 1105-1106.

The District of Columbia Circuit Court has also determined that pretrial detention does not apply to tolling of a supervised release term under 18 U.S.C.

§3624(e), albeit for reasons related to those as decided in Morales-Alejo. In United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016), the circuit court found that the language of 18 U.S.C. §3624(e) is based in the present tense, which removes the possibility of the backwards-looking method of statutory tolling advocated in the Sixth Circuit and those circuit courts which followed the Sixth Circuit's reasoning.

The Marsh Court determined that Congress's use of the present tense matters, as this Court has "frequently looked to verb tense to ascertain the meaning of statutes. See, e.g., Carr v. United States, 560 U.S. 438, 447–49, 130 S.Ct. 2229, 176 L.Ed.2d 1152 (2010) (relying on Congress's use of the present as opposed to the past or present perfect tense to conclude that a statute should be given a "forward-looking construction"); United States v. Wilson, 503 U.S. 329, 333, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992) ("Congress' use of a verb tense is significant in construing statutes.")" Marsh, 829 F.3d at 709. The Marsh panel observed that "The phrase "in connection with a conviction" [in §3624(e)] clarifies that the statute does not toll a term of supervised release any time the person "is imprisoned" or confined by the state, but rather only during those periods in which the person's imprisonment is triggered by a conviction." Id. at 710.

The District of Columbia Circuit found that the interpretation adopted in its opinion and in the Ninth Circuit's decision in Morales-Alejo makes the most sense, given that the analysis used in the Sixth Circuit's opinion in Goins is fraught with contingencies and looking back, which makes a district court's jurisdiction contingent on future events, and creates unfairness toward defendants who are unclear as to

whether they continue to be subject to the court's supervision. Marsh, 829 F.3d at 710. Finally, the Marsh opinion reflected the argument presented by Petitioner below, namely, that had the district court followed the applicable supervised release revocation procedural statute at 18 U.S.C. §3583(i), no tolling was necessary: "Under section 3583(i), a district court may address a supervised-release violation after the end of a supervised-release term if a warrant or summons issues prior to that term's expiration. 18 U.S.C. § 3583(i). That process—not followed here—provides fair notice to the defendant and certainty for all." Id.

B. The Fourth, Fifth, Sixth and Eleventh Circuits hold that pretrial detention tolls the running of a supervised release sentence, so long as that detention is eventually credited at some time in the future as time served on a conviction which was the reason for the pretrial detention

The first published opinion to adopt the reasoning used to deny relief for Petitioner Mont was United States v. Goins, 516 F.3d 416 (6th Cir.2008). Both opinions in United States v. Goins and United States v. Mont were authored by Sixth Circuit Court of Appeals Judge Karen Nelson Moore. The issue of the application of the "tolling" provision of 18 U.S.C. §3624(e) to pretrial detention was a matter of first impression for the Sixth Circuit when decided in 2008, and the Goins opinion acknowledged its split from the prior Ninth Circuit holding in Morales-Alejo. Goins, 516 F.3d at 417. The decision in Goins reflected a results-oriented approach to resolving a case where the court of appeals did not wish to "reward" a defendant for absconding from supervision.

Throughout the opinion, the Goins panel minimized the effect of its decision to find that pretrial detention later credited to a term of imprisonment tolled the running of supervised release and thus extended the term past its scheduled expiration: "We recognize that uncertainty may pose a real problem, yet we believe that the severity of this problem is likely overstated. The only time when such indeterminacy would exist is when a judge must determine whether jurisdiction for the revocation of supervised release exists and the defendant is between the period of his pretrial detention and the conclusion of his trial." Goins, 516 F.3d at 423. Even the Goins court acknowledged that a warrant or summons filed at the time of his detention or absconding as instructed under section 3583(i), would have obviated the need for the statutory gymnastic backflip under §3624(e) to find pretrial detention is mutable after the fact: "First, most absconders, by absconding and failing to report to their probation officers, would find themselves the subject of a warrant for arrest for a violation of the conditions of their supervised release. It is likely such a warrant would have been issued here had the Northern District of Ohio and the Western District of Kentucky not so completely failed in their monitoring of Goins." Id at 424.

The Fifth Circuit's opinion in United States v. Molina-Gazca, 571 F.3d 470 (5th Cir.2009) purported to look to the plain statutory meaning of §3624(e) to find that "[i]f the term "imprisonment" only refers to confinement that is the result of a penalty or sentence, then the phrase within § 3624(e), "in connection with a conviction," is superfluous. . . . Pretrial detention falls within "any period in which the person is imprisoned" and tolls the period of supervised release, provided a conviction ultimately

occurs. This plain meaning interpretation of § 3624(e) gives effect to all of its terms." Id. at 474, (internal citations omitted). The Fifth Circuit opinion failed to account for imprisonment in connection with civil contempt proceedings, immigration detainers, and other non-criminal situations where "imprisonment" may occur. Therefore, it appears that the Fifth Circuit does not require the imposition of a future sentence with credit for pretrial detention to be synonymous with "imprisonment," as did the Sixth Circuit in Goins.

The Fourth Circuit in United States v. Ide, 624 F.3d 666 (4th Cir.2010) followed the opinion in Goins, and held that a defendant's term of supervised release is tolled during pretrial detention that is later credited to the sentence based upon the charges which caused the pretrial detention in the first instance. Id. at 669.

2. This case is an Ideal Vehicle for Answering the Question Presented and Resolving the Conflict.

Petitioner states that his case is an ideal opportunity to correct and clarify the meaning and application of 18 U.S.C. §3624(e) to supervised release, where an individual is in pretrial detention and the government seeks to act on the supervised release after the expiration of the term. This case is perfectly poised to address the issue in light of its history, as this is not a case where the probation office failed to monitor a releasee as in Goins. Indeed, the district court had many opportunities prior to Mont's pretrial detention in June of 2016, and during his detention in Mahoning County Jail to issue a warrant based upon the many violations alleged by the probation officer and in light of his pleas of guilty to the two state court indictments

in October of 2016, well before the expiration of his five year supervised release term on March 7, 2017. Because the district court failed to exercise jurisdiction as instructed in the supervised release statute, 18 U.S.C. §3583, despite opportunities to do so, the use of section 3624(e), a statute that involves the release of prisoners and is the administrative directive from Congress to the Attorney General and the Bureau of Prisons, is particularly problematic.

The frequency of recurrence also lends this case as a prime vehicle to correct the faulty interpretations of the statute. There are many individuals on supervised release, and there are many violations of state law that have cause those supervised releasees to be detained. Particularly the large influx of released persons after this Court's decision in Johnson v. United States, __ U.S. __, 135 S.Ct. 2551 (2015) has caused an uptick of supervised release violations in the Northern District of Ohio, and around the Nation. This issue as to the running of supervised release during pretrial detention, the applicability of the statute to the preservation of jurisdiction, and the interpretation of the language of the statute will continue to be an issue which has shown sharp divisions in interpretation of the applicable statutes. Based upon all of these reasons, Petitioner submits that this case is the perfect vehicle for resolving the circuit split and the split in statutory interpretation.

3. The Sixth Circuit Erred in Holding that Section 3624(e) Applies and Affects the Jurisdiction of a District Court and Tolls the Running of the Supervised Release Term

The Sixth Circuit relied upon Goins to reject Petitioner's argument that the district court lacked jurisdiction to revoke his supervised release term, as the term had expired three weeks prior to the issuance of the violation warrant. Goins was decided based upon the premise that 18 U.S.C. §3624(e) is a procedural statute that dictates the district court's supervisory power over supervised releasees. However, that case, and those cases which follow Goins, do not acknowledge that §3624(e) does not affect the jurisdiction of the court to revoke supervision, which is governed by 18 U.S.C. §3583, and instead is a directive to the Bureau of Prisons when calculating credit for imprisonment and release.

Title18 United States Code §3624(e), is a statute which is located in Chapter 229 of Part II – Criminal Procedure of the United States Code. Section 3624, titled Release of Prisoner, generally directs the Attorney General and the Bureau of Prisons as to their duties and authority over the prisoner throughout incarceration and prerelease custody. Section 3624 is a part of Chapter 229, Subchapter C, a section of the Code entitled Postsentence Administration. This Chapter, separated into three subchapters, instructs the administration of individuals sentenced to probation in Part A; instructs method of collection of fines for those defendants whose sentence includes a fine, in Part B, and in Part C, the subchapter instructs how a sentence of imprisonment is to be administered. None of these provisions in Chapter 229 instruct how a district court,

in consideration and administration of a supervised releasee, is to notify, conduct, or sentence a defendant found in violation of their supervised release terms. Section 3624, titled "Release of a Prisoner," is clearly directed to post incarceration administration, including when and how a prisoner is released from imprisonment, not the authority to toll a sentence imposed by a district court judge.

There are mechanisms for district courts to use when a person on supervised release is detained, in order to preserve the district court's jurisdiction over that individual, to protect the district court's ability to adjudicate a violation of the terms of supervised release. The district court failed to exercise is jurisdiction through no fault of Petitioner, and that failure caused the five year supervised release term to expire. No backward-looking tolling provisions under section 3624(e) are able to resurrect the power of the district court to act beyond the expiration of the supervised release sentence's expiration.

CONCLUSION

The Court should grant this petition for a writ of certiorari

Respectfully submitted,

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APPENDIX A

United States v. Jason Mont
Sixth Circuit Court of Appeals Case No. 17-3732

Opinion filed February 15, 2018

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
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No. 17-3732

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 15, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA, **Plaintiff-Appellee,** v. JASON J. MONT, **Defendant-Appellant.**	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

OPINION

Before: MOORE, COOK, and McKEAGUE, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Defendant-Appellant Jason Mont appeals the district court's revocation of his term of supervised release, arguing that the district court lacked jurisdiction to impose the revocation because his term of supervised release had already expired. Because binding precedent instead makes clear that Mont's term of supervised release was paused by his imprisonment in connection with a new state conviction, we conclude that the district court did indeed have jurisdiction and thus **AFFIRM**.

I. BACKGROUND

Because Mont's challenge hinges on a few key dates, two sections of statutory text, and one case, we review the facts here only briefly. In December 2005, Mont was convicted of violating 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and 18 U.S.C. § 922(g)(1), and sentenced to 120 months of imprisonment to be followed by five years of supervised release. R. 37 (2005 Crim. J. at 1–3) (Page ID #109–11). He appears to have been released from prison on March 6,

2012. *See* R. 90 (Supervision Report at 1) (Page ID #415); *see also* Inmate Locator, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/inmateloc/ (listing a release date of "03/06/2012" after a search for "Jason J. Mont"); Appellant's Br. at 4; Appellee's Br. at 4. His release from prison started the clock ticking on his five years of supervised release, *see* 18 U.S.C. § 3624(e)—a countdown slated to end on March 6, 2017.[1]

Unfortunately, that five-year period was not a smooth one for Mont. In January 2016, his probation officer submitted to the district court a violation report alleging that Mont had failed to comply with the terms of his supervised release in two ways: (1) by testing positive during two drug tests for controlled substances (Oxycodone and Oxymorphone) for which he lacked a prescription, and (2) by using some "unknown" liquid to try to pass two subsequent drug tests. R. 89 (First Violation Report at 1) (Page ID #411). Moreover, Mont's probation officer noted, Mont had been "secretly indicted by the Mahoning County Grand Jury on two counts of Trafficking in Marijuana" back in March 2015. *Id.* At the time of the probation officer's report, those state charges were still pending, and a jury trial was scheduled for March 14, 2016. *Id.* at 1–2 (Page ID #411–12). In light of the pending state-court case, the district judge declined to issue a warrant, and instead asked that the court "be notified of the resolution of the state charges." *Id.* at 4 (Page ID #414).

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[1]Or possibly March 7, 2017. *Compare* R. 90 (Supervision Report at 1) (Page ID #415) (March 6), *with* R. 89 (First Violation Report at 1) (Page ID #411) (March 7), *and* R. 100 (Second Violation Report at 1) (Page ID #454) (same). But as the Government concedes, "[t]he one-day difference does not affect the outcome here." Appellee's Br. at 4 n.1. Both to give Mont the benefit of the ambiguity and because March 6 appears more accurate, we use that date here.

Mont's state jury trial ended up being postponed. R. 90 (Supervision Report at 1) (Page ID #415). Nevertheless, as his probation officer reported, Mont was arrested on June 1, 2016, as a result of a new secret indictment from Mahoning County, this one for "five counts of Trafficking in Cocaine." *Id.* He was "incarcerated in the Mahoning County Jail," *id.* at 2 (Page ID #416), and, as he concedes, remained in state custody going forward, *see* R. 100 (Second Violation Report at 2) (Page ID #455); *see also* Appellant's Br. at 6.[2]

In October 2016, Mont entered into a plea agreement with the Mahoning County prosecutors, pleaded guilty to some of his state court charges in exchange for a predetermined six-year sentence, R. 95-1 (Def.'s Mot. for Continuance, Ex. A) (Page ID #430–38), and filed a written admission in federal court acknowledging that he had violated the terms of his supervised release and requesting a hearing on the matter, R. 92 (Def.'s Admission) (Page ID #419). But Mont had not yet been officially sentenced for the new, state-court convictions. Though the district court initially set a November 2016 date for Mont's supervised-release-violation hearing, a flurry of continuances followed in both state and federal court. *See, e.g.*, R. 94 (Gov't's Mot. for Continuance at 1) (Page ID #424). Ultimately, on March 21, 2017, Mont was sentenced in

[2]Again, there is some minor confusion regarding the particular date. At Mont's revocation hearing in federal court, his probation officer testified that Mont "went into custody on May 26th, 2016, and he remained in custody to this date." R. 116 (Violation Hr'g Tr. at 7) (Page ID #490). But the May 26 date does not appear to be otherwise reflected in the district-court record, and Mont instead cites the June 1 date, *see* Appellant's Br. at 6. (For its part, the Government repeatedly gives the operative date as "March 26, 2016." Appellee's Br. at 5–6, 10, 14–15. That date, also not reflected in the record, is presumably an accidental misrendering of "May" from the probation officer's testimony.) Giving Mont the benefit of the doubt, we treat June 1, 2016, as the beginning of Mont's state imprisonment, noting that Mont's challenge does not hinge on this temporal difference either.

state court to a total of six years' imprisonment, encompassing multiple concurrent terms stemming from the various state charges on which he had been indicted and arrested. *See* R. 100 (Second Violation Report at 1) (Page ID #454). Importantly, Mont's state-court sentencing judge credited the roughly ten months that Mont had already been incarcerated pending a disposition as time served. *See State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017); *State v. Mont*, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017).[3]

On March 30, 2017—now more than three weeks after Mont's term of supervised release had initially been set to expire—Mont's probation officer updated the district court regarding Mont's state-court convictions and sentences. R. 100 (Second Violation Report at 1) (Page ID #454) (same). The district court ordered the issuance of a warrant that same day, *id.* at 4 (Page ID #457); R. 101 (Arrest Warrant at 1) (Page ID #458), and set a supervised-release-violation hearing for June 28, 2017, R. 103 (Pet. for Writ of Habeas Corpus ad Prosequendum at 1) (Page ID #462).

Two days before that hearing, Mont's counsel filed a memorandum contending that "Mont's period of supervised release expired on March 6, 2017," and thus disputing the district court's jurisdiction to adjudicate his otherwise-admitted violation. R. 107 (Def.'s Violation Hr'g Mem. at 2) (Page ID #473). At the hearing, the district court addressed Mont's challenge and

[3]As the Government notes, Appellee's Br. at 15 n.2, "it is well-settled that federal courts may take judicial notice of proceedings in other courts of record." *Lyons v. Stovall*, 188 F.3d 327, 333 (6th Cir. 1999) (punctuation and citation removed). We do so here, where the relevant records were publicly available from the Mahoning County Courts, *see* CourtVIEW, MAHONING COUNTY COURTS, https://courts.mahoningcountyoh.gov/eservices/home.page.2.

"conclude[d] that [it did], in fact, have jurisdiction over this matter." *See* R. 116 (Violation Hr'g Tr. at 9) (Page ID #492). In explaining its conclusion, the district court first stated that it had "give[n] notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." *Id.* at 7 (Page ID #490). The district court then made reference to 18 U.S.C. § 3583(i), stating that under that provision "a Court retains the power to impose a sanction for a supervised release violation beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising from its expiration."[4] *Id.* at 8–9 (Page ID #491–92). Though the district court acknowledged that, "if all things went as they should have gone, supervision would have expired on March 7th, 2017," the district court reasoned that the extra "time was, in fact, reasonably necessary because it was the actions of the defendant that caused the various extensions of time of having the supervised release violation hearing." *Id.* at 9 (Page ID #492).

The district court proceeded to sentence Mont to 42 months of imprisonment, to be served consecutively to Mont's imprisonment for his state-court convictions. *Id.* at 17 (Page ID #500). Mont timely appealed on the jurisdictional question.

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[4]For maximal clarity, we note here that this expression of the statutory rule left off a key conditional phrase. In fact, a court's "power . . . to revoke a term of supervised release . . . extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before [that term's] expiration *if*, before [that term's] expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphasis added). As will be apparent, however, this accidental omission does not affect the outcome of this case.

II. DISCUSSION

A. Standard of Review

"We review de novo [a] district court's . . . determination that it had jurisdiction to revoke [a defendant's] supervised release." *United States v. Cross*, 846 F.3d 188, 190 (6th Cir. 2017).

B. The District Court's Jurisdiction

The math in this case is simple: Mont's supervised-release clock was initially set at five years. If it ticked its way down inexorably, then time would have expired on March 6, 2017, and the district court would have lacked jurisdiction to impose a violation at any later date.

But the clock's countdown was not inexorable. Two statutory provisions explain (1) how time could have been extended and (2) how the clock could have been paused. First, "[t]he power of the court to revoke a term of supervised release . . . *extends beyond the expiration of* the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration *if, before its expiration*, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphases added). That is how time could have been extended. *See United States v. Ossa-Gallegos*, 491 F.3d 537, 543 n.5 (6th Cir. 2007) (en banc). Second, while a "term of supervised release commences on the day the person is released from imprisonment," that term "*does not run* during any period in which the person is imprisoned *in connection with* a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. § 3624(e) (emphases added). That is how the clock could have been paused.

This second, clock-pausing provision presents an interpretive riddle that we took on in *United States v. Goins*, 516 F.3d 416 (6th Cir. 2008): does thirty days or more of pretrial detention for a charge that results in (and is credited to) a conviction count as "imprisonment in connection with" that conviction? If so, we would understand a defendant's supervised-release clock as having been stopped during any days that defendant spent incarcerated after an indictment, at least so long as (1) that indictment resulted in a conviction and (2) that incarceration was credited as time served for the conviction. And that, in *Goins*, is what we held: "that [1] when a defendant is held for thirty days or longer in pretrial detention, and [2] he is later convicted for the offense for which he was held, and [3] his pretrial detention is credited as time served toward his sentence, then the pretrial detention is 'in connection with' a conviction and tolls the period of supervised release under § 3624." *Id.* at 417. And we explicitly rejected any "temporal limitations" for this rule, finding none in the statute's text and thus acknowledging that our rule might "require a 'backward-looking analysis'" at times. *Id.* at 422 (quoting *United States v. Morales-Alejo*, 193 F.3d 1102, 1104 (9th Cir. 1999)).

As may be clear by now, *Goins* resolves this case.[5] Mont was held for roughly ten months in pretrial detention. *See* R. 90 (Supervision Report at 1–2) (Page ID #415–16); R. 100

[5]Because it does, we need not consider the Government's alternate argument for affirmance: that the district "court's issuance of a summons before [Mont's] supervision expired" triggered an extension under § 3583(i). Appellee's Br. at 13. While it is true that the district court said during Mont's hearing that it had issued such a summons in November 2016, R. 116 (Violation Hr'g Tr. at 7) (Page ID #490), Mont contends "that there is no evidence on the record which indicates that the district court actually filed" such a summons, Reply Br. at 3. We too have failed to detect any such evidence in the record, and the Government has not pointed us

(Second Violation Report at 1–2) (Page ID #454–55). He was later convicted of the offenses for which he was held. *See* R. 100 (Second Violation Report at 1–2) (Page ID #454–55). That pretrial detention was credited as time served toward his sentence. *State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017); *State v. Mont*, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017). Accordingly, Mont's term of supervised release did "not run during" those ten months (nor, for that matter, during the post-conviction incarceration that followed). *See* 18 U.S.C. § 3624(e); *Goins*, 516 F.3d at 417. This means that there was still quite a bit of time left on the clock when the district court issued its warrant on March 30, 2017, R. 101 (Arrest Warrant at 1) (Page ID #458), triggering the "extension" that 18 U.S.C. § 3583(i) in turn provides.[6] The district court, in other words, had jurisdiction.

Mont seeks to avoid this result in a few ways, mostly by arguing two variants of the idea that "the district court . . . failed to take the steps that were necessary to preserve its jurisdictional authority," Appellant's Br. at 21. First, he argues that the district court neglected to mention

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to any, citing only the district court's own statement. *See, e.g.*, Appellee's Br. at 13. Nevertheless, we leave this question aside, as *Goins* requires that we affirm regardless.

[6]Of course, that extension was not itself necessary in this case, because, given the length of Mont's incarceration, there would have been time left on the clock in any event when Mont's supervised-release-violation hearing finally occurred on June 28, 2017. But that may not always be the case, as indeed it was not in *Goins* itself. *See Goins*, 516 F.3d at 418–19. In other words, the interaction between the two statutory provisions can be crucial: in some cases § 3624(e)'s having briefly paused a defendant's supervised-release clock will make the difference as to whether there was still time remaining when a court's issuance of a warrant or summons in turn triggered § 3583(i)'s extension, even though the resulting hearing itself would have otherwise impermissibly fallen "beyond the expiration of the term of supervised release," *see* 18 U.S.C. § 3583(i).

Goins or "make any finding regarding tolling, and instead relied upon Section 3583(i)." *Id.* at 22. This is essentially a forfeiture argument: that because the district court did not invoke *Goins* or § 3624(e)'s clock-pausing powers, those powers were never activated in the first place and cannot be activated now.

This argument fails for several reasons. First of all, as the Government notes, "Mont presents no authority establishing that the court was required to take affirmative steps to 'preserve' authority during a tolling period." Appellee's Br. at 16. Indeed, nothing in *Goins* suggests that a district court must invoke § 3624(e) specifically for its statutory commands to be in effect. Second, as the Government also notes, Appellee's Br. at 19, "[a] decision below must be affirmed if correct for any reason, including a reason not considered by the lower court." *United States v. Henderson*, 626 F.3d 326, 334 (6th Cir. 2010) (quoting *Russ' Kwik Car Wash, Inc. v. Marathon Petroleum Co.*, 772 F.2d 214, 216 (6th Cir. 1985)). We cannot, in other words, rule that the district court lacked jurisdiction simply because we would have explained why the district court had jurisdiction differently. Nor, third, would that kind of approach to federal-court jurisdiction fit with longstanding federal-court doctrine, which does not treat our jurisdiction as the kind of thing that can be squandered by design *or* inattention. *Cf. Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) ("Unlike an objection to venue, lack of federal jurisdiction cannot be waived or be overcome by an agreement of the parties. An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review.").

Mont also offers a second spin on this necessary-steps argument: that § 3624(e) pauses the clock only when a court has first undertaken the procedures—issuing a summons or warrant—outlined in § 3583(i). He points out, for example, that "this Court has specifically rejected [§ 3583(i)] as a tolling mechanism," Appellant's Br. at 22, and argues that § 3583(i) instead "permits a delayed revocation hearing only when the district court has preserved its power, or jurisdiction, to act beyond the termination of a sentence by means of issuing a summons or warrant," Reply Br. at 6.

This argument also fails. Again, there is the problem that Mont offers no authority or explanation for why a warrant or summons under § 3583(i) would serve as a necessary precondition for § 3624(e). But more importantly, nothing in the text of the statutes suggests as much, and *Goins* itself contradicts Mont's theory. *See Goins*, 516 F.3d at 418–19 (noting that the problem presented by the case was that § 3583(i) was *not satisfied* but that § 3624(e) could nevertheless render the relevant "warrant timely," *id.* at 419). And while Mont is correct that § 3583(i) is not what we have called "a tolling provision," *see Ossa-Gallegos*, 491 F.3d at 543 n.5, that fact is irrelevant. Mont's appeal fails, rather, because § 3624(e) *is* what we have called a tolling provision.[7]

[7]That said, what the word "tolled" means turns out to be a thorny question, susceptible to two different interpretations. *See generally Artis v. District of Columbia*, — S. Ct. —, 2018 WL 491524 (2018) (addressing whether 28 U.S.C. § 1367(d) serves to pause state statute-of-limitations periods or to provide a grace period after those periods expire). Thankfully, that ambiguity is not at issue here, as the plain text of § 3624(e) makes clear that it is, more precisely, a clock-pausing provision.

What remains of Mont's argument amounts essentially to an attack on *Goins* itself and an endorsement of the D.C. Circuit's recent decision to the contrary, *see United States v. Marsh*, 829 F.3d 705 (D.C. Cir. 2016). That is fair enough: there is indeed a circuit split on this question. *Compare United States v. Ide*, 624 F.3d 666, 667 (4th Cir. 2010) (holding that pretrial detention can qualify as imprisonment under § 3624(e)), *United States v. Johnson*, 581 F.3d 1310, 1312–13 (11th Cir. 2009) (same), *United States v. Molina-Gazca*, 571 F.3d 470, 471 (5th Cir. 2009) (same), *and Goins*, 516 F.3d at 417 (6th Cir.) (same), *with Marsh*, 829 F.3d at 705 (D.C. Cir.) (holding that pretrial detention does not qualify), *and Morales-Alejo*, 193 F.3d at 1106 (9th Cir.) (same). But *Goins* is a published decision, and "a published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" *Sykes v. Anderson*, 625 F.3d 294, 319 (6th Cir. 2010) (quoting *Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). *Goins* therefore forecloses Mont's challenge to the district court's jurisdiction.

III. CONCLUSION

Under our binding precedent interpreting federal law, the clock on Mont's supervised-release term stopped ticking the day that Mont was incarcerated in Mahoning County in connection with his eventual convictions, given that his incarceration was greater than or equal to thirty days and credited as time served for those convictions. Consequently, there was still time remaining on Mont's supervised-release clock—and therefore jurisdiction—when the

district court issued its warrant (and, for that matter, when it ultimately adjudicated Mont's supervised-release violation). We accordingly **AFFIRM** the district court's judgment.

§ 3583. Inclusion of a term of supervised release after imprisonment
(a) . . .
( )
(h) ...

(i) **Delayed revocation.**--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

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§ 3624. Release of a prisoner

(a) Date of release.--A prisoner shall be released by the Bureau of Prisons . . .

(b) Credit toward service of sentence for satisfactory behavior.--
(1) . . .
(2) . . .
(3) . . .
(4) . . .

(c) Prerelease custody.--
(1) In general.--The Director of the Bureau of Prisons shall, . . .
(2) Home confinement authority.--. . .
(3) Assistance.--. . .
(4) No limitations.--Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.
(5) Reporting.--Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall . . .
(6) Issuance of regulations.--The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection . . .
(A) . . .;
(B) . . .; and
(C) . . .

(d) Allotment of clothing, funds, and transportation. --Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with--
(1) suitable clothing;
(2) an amount of money, not more than $500, determined by the Director . . .; and
(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence . . .

(e) Supervision after release. --A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) Mandatory functional literacy requirement.--

(1) The Attorney General shall direct the Bureau of Prisons . . .

(2) Each mandatory functional literacy program shall include . . .

(3) As used in this section, the term "functional literacy" means--

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program . . .

(5) The Chief Executive Officer of each institution shall have authority to grant waivers . . .

No. 17-8995

IN THE SUPREME COURT OF THE UNITED STATES

JASON J. MONT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a period of supervised release for one offense is tolled under 18 U.S.C. 3624(e) during a period of pretrial confinement that upon conviction is credited toward a defendant's term of imprisonment for another offense.

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-8995

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is not published in the Federal Reporter but is available at 723 Fed. Appx. 325.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2018. The petition for a writ of certiorari was filed on May 15, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Ohio, petitioner was convicted of conspiring to possess with intent to distribute and to distribute cocaine base, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) and 846, and being a felon in possession of a firearm, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to concurrent terms of 120 months of imprisonment on both counts, to be followed by concurrent terms of five years of supervised release on the drug count and three years of supervised release on the firearms count. Judgment 2-3. While on supervised release, petitioner was charged with a number of state crimes and ultimately convicted of several of those offenses. The district court revoked petitioner's supervised release and ordered a 42-month term of imprisonment, to be served consecutively to his state sentence. Pet. App. 5a. The court of appeals affirmed. Id. at 1a-12a.

1. In 2005, petitioner pleaded guilty to one count of participating in a drug trafficking conspiracy and one count of being a felon in possession of a firearm. He was sentenced to concurrent terms of 120 months of imprisonment on each count, to be followed by an aggregate five years of supervised release. Pet. App. 1a.

The district court later granted two sentence reductions under 18 U.S.C. 3582(c), and ultimately reduced petitioner's terms of imprisonment to 84 months. Gov't C.A. Br. 3-4.

2. Petitioner's five-year period of supervised release began on March 6, 2012, and was "slated to end on March 6, 2017." Pet. App. 2a. In January 2016, petitioner's probation officer filed a violation report with the district court, alleging that petitioner had violated the conditions of his supervised release by testing positive for controlled substances for which he lacked a prescription (Oxycodone and Oxymorphone) and by "using [an] 'unknown' liquid to try to pass two subsequent drug tests." Ibid. (citation omitted). The probation officer also noted that petitioner had been "'secretly indicted'" in Ohio state court on two counts of marijuana trafficking in March 2015, with a jury trial scheduled for March 2016. Ibid. The district court declined to issue a warrant "in light of the pending state-court case" and instead asked to 'be notified of the resolution of the state charges.'" Ibid. (citation omitted).

Petitioner's marijuana-trafficking trial was postponed, and in or about June 2016, before that state case was resolved, petitioner was arrested again on a new state indictment charging five counts of trafficking in cocaine. Pet. App. 3a; see id. at 3a n.3 (noting "minor confusion" in the record on whether arrest occurred on May 26 or June 1). Petitioner was "incarcerated in

the Mahoning County Jail" following that arrest, and "remained in state custody going forward." Id. at 3a (citation omitted). Meanwhile, petitioner's federal probation officer filed a supervision report alleging in light of the new state charges that petitioner had violated the terms of his supervised release by committing the new state offenses. Ibid.; see Gov't C.A. Br. 5.

In October 2016, petitioner entered into a plea agreement with state prosecutors in which he agreed to plead guilty to "some of his state court charges in exchange for a predetermined six-year sentence." Pet. App. 3a. He also "filed a written admission in federal court acknowledging that he had violated the terms of his supervised release and requesting a hearing on the matter." Ibid. The district court initially scheduled a supervised release hearing for November 2016. But petitioner "had not yet been officially sentenced for the new, state-court convictions," and "a flurry of continuances followed in both state and federal court." Ibid.

On March 21, 2017, petitioner was sentenced in state court to a total of six years of imprisonment. Pet. App. 3a-4a. The judge "credited the roughly ten months that [petitioner] had already been incarcerated pending a disposition as time served." Id. at 4a.

On March 30, 2017, petitioner's probation officer filed a report updating the district court on petitioner's state

convictions and sentences. Pet. App. 4a. The district court ordered issuance of a warrant on the same date. Ibid.

In advance of the supervised-release hearing, petitioner challenged whether the court had jurisdiction to adjudicate his violations of supervised release. Pet. App. 4a. Petitioner relied on the fact that his supervised-release had initially been scheduled to expire on March 6, 2017. See D. Ct. Doc. 107 at 2 (June 26, 2017); see also Pet. App. 4a.

The district court rejected petitioner's contention, concluding that it did have jurisdiction. 6/28/17 Tr. (Tr.) 7. It invoked 18 U.S.C. 3583(i), which provides that "[t]he power of the court to revoke a term of supervised release for a violation of a condition of supervised release * * * extends beyond the expiration of a term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." See Tr. 8-9. The court stated that it had "give[n] notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." Tr. 7. And it stated that the delays in adjudicating the violation were necessary "because it was the actions of the defendant that caused the various extensions of time of having the supervised release violation hearing.'" Tr. 9.

The district court ordered a 42-month term of imprisonment, to be served consecutively to his state sentence. Tr. 17. The court explained that a term of that length was appropriate in light of petitioner's criminal history, which included 18 convictions, of which the "overwhelming majority [we]re for drugs and guns." Ibid.

3. The court of appeals affirmed in an unpublished decision. Pet. App. 1a-12a. The court observed that although petitioner's "supervised-release clock" was initially set to expire on March 6, 2017, "the clock's countdown was not inexorable." Id. at 6a. In particular, it wrote, the time "could have been extended" under 18 U.S.C. 3583(i), "for any period reasonably necessary for the adjudication of matters arising before its expiration, if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.'" Pet. App. 6a (citation and emphasis omitted). In addition, the court explained, "the clock could have been paused" under 18 U.S.C. 3624(e), which tolls a period of supervised release when the defendant "is imprisoned in connection with a conviction for a Federal, State, or local crime," when the imprisonment is for at least 30 days. Pet. App. 6a (citation and emphasis omitted).

The court of appeals observed that its prior decision in United States v. Goins, 516 F.3d 416, 422, 424 (6th Cir.), cert.

denied, 555 U.S. 847 (2008), established that the district court had jurisdiction to revoke petitioner's supervised release under the "second, clock-pausing provision." Pet. App. 7a. In Goins, the court of appeals determined

> that [1] when a defendant is held for thirty days or longer in pretrial detention, and [2] he is later convicted for the offense for which he was held, and [3] his pretrial detention is credited as time served toward his sentence, then the pretrial detention is 'in connection with' a conviction and tolls the period of supervised release under § 3624.

Ibid. (quoting Goins, 516 F.3d at 417). Applying that standard here, the court found that petitioner's supervised release did not run during his ten months of pretrial detention on the state drug charges for which he was ultimately convicted. Id. at 8a. As a result, the court wrote, "there was still quite a bit of time left on the clock when the district court issued its warrant on March 30, 2017." Ibid.

The court of appeals noted the government had alternatively argued that even if the period of supervised release had not been tolled, the district court retained jurisdiction under Section 3583(i) because it had issued a summons before supervised release was initially scheduled to expire on March 6, 2017. Pet. App. 7a n.5; see Gov't C.A. Br. 12-14. The government maintained that because the district court issued a summons on November 1, 2016, "several months before the original March 2017 expiration date, the court was entitled to continue the supervised release

revocation proceedings pending resolution of [petitioner's] state court case." Gov't C.A. Br. 13. The court of appeals noted, however, the petitioner disputed whether the district court had actually filed a summons in November 2016. Pet. App. 7a n.5. It concluded that it need not resolve this issue, because Goins required affirmance "regardless." Id. at 8a n.5.

ARGUMENT

Petitioner renews his contention (Pet. 13-21) that a period of pretrial detention credited against a defendant's sentence is not "imprison[ment] in connection with a conviction," 18 U.S.C. 3624(e), that tolls the expiration of a term of supervised release for a separate federal offense. The court of appeals correctly rejected that contention, and its decision does not warrant further review in this case. Although some disagreement exists among courts of appeals concerning whether pretrial detention credited against a defendant's sentence tolls expiration of a term of supervised release, that disagreement does not warrant intervention at this time. Moreover, petitioner's case is an unsuitable vehicle for addressing the question presented because of the lack of clarity in the record concerning whether the district court did in fact issue a summons that would have triggered Section 3583(i). This Court has repeatedly denied review of the question presented, and the same result is warranted here. See Herrera-Montes v. United States, 568 U.S. 1012 (2012) (No. 12-

5264); Becker v. United States, 566 U.S. 941 (2012) (No. 11-8279); Ide v. United States, 563 U.S. 1035 (2011) (No. 10-9260); Johnson v. United States, 561 U.S. 1012 (2010) (No. 09-9702); Molina-Gazca v. United States, 558 U.S. 1150 (2010) (No. 09-6457); Goins v. United States, 555 U.S. 847 (2008) (No. 07-11060).

1. A district court's authority to revoke supervised release and return a defendant to prison "extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before [the term's] expiration," as long as, "before [the term's] expiration, a warrant or summons has been issued on the basis of an allegation" that the defendant has violated a condition of supervised release. 18 U.S.C. 3583(i). In addition, 18 U.S.C. 3624(e) provides that "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days."

In this case, the court of appeals concluded that petitioner's term of supervised release had not expired before the district court adjudicated his supervised-release violation, because that term had been tolled during the period of state pretrial detention that was ultimately credited to his state sentence. In reaching that conclusion, the court of appeals relied on its earlier decision in United States v. Goins, 516 F.3d 416, 422, 424 (6th

Cir.), cert. denied, 555 U.S. 847 (2008), which correctly determined that a period of pretrial detention on a new federal charge is a "period in which the person is imprisoned in connection with a conviction" for a crime when the defendant is ultimately convicted on that charge and the period of detention is credited toward his sentence, 18 U.S.C. 3624(e).

Pretrial detention constitutes imprisonment under the ordinary meaning of the word "imprisoned." See Webster's Third New International Dictionary 1137 (1993) (defining "imprison" as "to put in prison: confine in a jail" or "to limit, restrain, or confine as if by imprisoning"). That interpretation is reinforced by Congress's use of similar terms elsewhere in Title 18. See 18 U.S.C. 3626(g)(5) (defining "prison" as "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law") (emphasis added); 18 U.S.C. 3041 (general arrest statute) ("[T]he offender may * * * be arrested and imprisoned or released * * * for trial.") (emphasis added). By contrast, interpreting the term "imprison[ment]" to encompass only post-conviction incarceration would render superfluous Section 3624(e)'s additional requirement that the imprisonment be "in connection with a conviction." See Goins, 516 F.3d at 421 (observing that if imprisonment meant only "confinement that is

the result of a penalty or sentence," the statutory phrase "in connection with a conviction" would be unnecessary).

Time spent incarcerated is imprisonment "in connection with a conviction" when the period of incarceration is credited to a defendant's sentence for the conviction at issue. Section 3624(e) places no temporal limitation on the "connection" between imprisonment and conviction. This Court has repeatedly held that the phrase "in connection with" has a broad meaning. See, e.g., Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006) (noting that the Court has "espoused a broad interpretation" of "in connection with" in Section 10(b) of the Securities Exchange Act, 1934, 15 U.S.C. 78j(b)); United States v. American Union Transp., Inc., 327 U.S. 437, 441-443 (1945) (describing the use of "in connection with" in Section 1 of the Shipping Act of 1916, ch. 451, 39 Stat. 728, as "broad and general"); see also United States v. Loney, 219 F.3d 281, 283-284 (3d Cir. 2000) (observing that dictionaries and usage experts give "expansive" scope to the phrase "in connection with" as "express[ing] some relationship or association, one that can be satisfied in a number of ways"); United States v. Thompson, 32 F.3d 1, 7 (1st Cir. 1994) ("[T]he phrase 'in connection with' should be interpreted broadly."). That reading is appropriate here: Section 3624(e) uses "in connection with" to make clear that the period of imprisonment must have some relationship to a

conviction, but nothing in the statute requires that the imprisonment come after the conviction.

Petitioner is mistaken insofar as he contends (Pet. 15-16) that pretrial detention credited to a defendant's sentence is not imprisonment in connection with a conviction for purposes of Section 3624(e) because the relevant language is "based in the present tense," Pet. 15. Congress likely chose the phrase "is imprisoned" to describe the imprisonment in order to match the present tense in the earlier phrase "does not run." 18 U.S.C. 3624(e) (supervised release "does not run" during any period in which the person "is imprisoned in connection with an offense"). And petitioner does not offer an alternative wording that would better capture Congress's evident intent that a defendant not pretermit his supervised release term based on his commission of another crime. Although the provision requires a "conviction" -- and thereby credits a defendant in circumstances where his commission of a new crime is not proven -- the provision's broad language reaching any imprisonment "in connection with" a conviction naturally encompasses the whole period of imprisonment for that proven crime. Congress did not limit the provision to imprisonment "following a conviction," and no such limitation should be inferred.

Petitioner principally argues (Pet. 20-21) that Section 3624(e) is inapposite because the provision is "a directive to the

Bureau of Prisons when calculating credit for imprisonment and release," rather than a provision concerning "jurisdiction of the court to revoke supervision." That argument lacks merit. Section 3624(e) explains when a term of supervised release runs. See United States v. Johnson, 529 U.S. 53, 57 (1999). It specifies when the term "commences" and then provides that the term "does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. 3624(e). Because courts undisputedly have authority to revoke terms of supervised release that have not yet ended, see 18 U.S.C. 3582(e) and (i), Section 3624(e)'s directives on when sentences begin and end bear on courts' authority to revoke supervised release, even though Section 3624(e) is not phrased in jurisdictional terms.

2. Some disagreement exists concerning tolling of supervised release under Section 3624(e), but the evolving case law and limited practical importance of the question presented counsel against this Court's intervention at this time.

a. Four circuits have held that a period of supervised release is tolled under Section 3624(e) during pretrial confinement for a new crime that is credited toward a defendant's sentence of imprisonment for the new crime. See United States v. Ide, 624 F.3d 666, 667-670 (4th Cir. 2010), cert. denied, 563 U.S.

1035 (2011); United States v. Johnson, 581 F.3d 1310, 1311-1313 (11th Cir. 2009), cert. denied, 561 U.S. 1012 (2010); United States v. Molina-Gazca, 571 F.3d 470, 474 (5th Cir. 2009), cert. denied, 558 U.S. 1150 (2010); Goins, 516 F.3d at 422, 424.

Two circuits have held to the contrary. The Ninth Circuit did so in the first decision to address the question presented, in which it concluded that periods of pretrial confinement cannot toll supervised release under Section 3624(e) based on an asserted distinction between "imprisonment" and "detention" and a concern that tolling would be unclear until a conviction was entered. United States v. Morales-Alejo, 193 F.3d 1102, 1105-1106 (1999). More recently, the D.C. Circuit concluded that Section 3624(e) "does not toll supervised-release terms during periods of pretrial detention," but "for different reasons than those articulated by the Ninth Circuit." United States v. Marsh, 829 F.3d 705, 709 (D.C. Cir. 2016). The court based its analysis on "the word 'is,'" reasoning that "[b]y phrasing the statute in the present tense, Congress has foreclosed the type of backward-looking tolling analysis that" other courts allow. Ibid.

b. The disagreement in the circuits does not currently warrant review. The Ninth Circuit's decision rests on an understanding of the term "imprisonment" that later decisions have convincingly refuted, see Ide, 624 F.3d at 668-670; Molina-Gazca, 571 F.3d at 473-474; Goins, 516 F.3d at 419-424, and on which the

Ninth Circuit's own decisions cast significant doubt. In Arreguin-Moreno v. Mukasey, 511 F.3d 1229 (2008), the court interpreted 8 U.S.C. 1101(f)(7), an immigration law that provides that an alien cannot satisfy the "good moral character" requirement for cancellation of removal if he was "confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more." The Ninth Circuit concluded that "pre-trial detention that is later credited as time served in the sentence imposed as a result of conviction counts as confinement as a result of conviction within the meaning of § 1101(f)(7)." Arreguin-Moreno, 511 F.3d at 1232. The court held that "after judgment, any credited pre-conviction detention effectively becomes time served on the imposed term of imprisonment," and "pre-conviction custody thereby becomes the term of imprisonment imposed by the judgment." Ibid. (quoting Spina v. Department of Homeland Sec., 470 F.3d 116, 127-128 (2d Cir. 2006)). Arreguin-Moreno did not cite Morales-Alejo, and the Ninth Circuit made no effort to explain why pretrial detention that is credited toward a defendant's sentence upon his conviction "becomes the term of imprisonment" and is imposed "as a result of conviction" for purposes of 8 U.S.C. 1101(f)(7), but is not "imprison[ment] in connection with a conviction" for purposes of 18 U.S.C. 3624(e). The obvious tension between those holdings may

lead the Ninth Circuit to reconsider the question presented en banc in an appropriate case.

The D.C. Circuit's 2016 ruling adopts an analysis that other courts have not yet had occasion to address. As the D.C. Circuit observed, its decision rested on "different reasons than those articulated by the Ninth Circuit" and "on a word that our sister circuits and the parties have appeared to ignore." Marsh, 829 F.3d at 709. No other court of appeals appears to have yet considered that court's novel rationale. While the unpublished order in this case post-dates Marsh, the court of appeals correctly noted that it was bound by its precedent in Goins and could depart only if it sat as an en banc court. Pet. App. 11a. Petitioner did not then seek en banc review. Further percolation in the courts of appeals would be beneficial.

c. Moreover, the question presented has limited practical importance for adjudications like this. Section 3583(i) permits courts to extend their authority to adjudicate violations for any reasonably necessary period -- including a period necessitated by a defendant's pretrial detention on another charge -- by issuing a warrant or summons. In light of that provision, the differing approaches to tolling under Section 3624(e) are unlikely to affect whether courts maintain the authority to adjudicate violations of supervised release following pretrial incarceration in typical cases. See Pet. 17 (suggesting that the court of appeals' approach

is unwarranted because "a warrant or summons filed at the time of his [pretrial] detention * * * would have obviated the need for" the court's interpretation of Section 3624(e)); Marsh, 829 F.3d at 710 (stating that "tolling generally would be unnecessary for a district court to preserve its jurisdiction to revoke a defendant's supervised-release term in circumstances like those in this case" because of Section 3583(i)); Goins, 516 F.3d at 424 (noting in a case where a defendant had violated his conditions of supervised release by absconding from supervision that a warrant would typically be issued when the violation occurred). The limited practical importance of the question presented in this context provides additional reason that this Court's intervention is not warranted here.

3. In any event, this case is not a suitable vehicle for consideration of the question presented because of the lack of clarity concerning whether the district court issued a summons that triggered Section 3583(i). The district court determined that it had jurisdiction to adjudicate the supervised release violation in this case because it had issued a summons to the defendant before supervised release expired. See Tr. 7 (stating that the court gave petitioner "notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016"). Moreover, petitioner's counsel filed an opposition to the government's

motion to continue the November 9 hearing, thereby indicating that petitioner obtained actual notice of the hearing date. See D. Ct. Doc. 95, at 1-2 (Nov. 2, 2016). While the court of appeals found it unnecessary to address the application of Section 3583(i) in light of its settled precedent concerning Section 3624(e), Pet. App. 7a n.5, the unresolved factual record and the possible alternative ground for affirmance make this case a poor vehicle for this Court's review of the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2018

No.17-8995

In the

Supreme Court of the United States

JASON J. MONT

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

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October 1, 2018

TABLE OF AUTHORITIES

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REPLY BRIEF FOR THE PETITIONER

Petitioner Jason J. Mont respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case. This Court's review is important in light of the faulty interpretation of a statute which is an administrative statute directed to the Bureau of Prison specifically, and the Executive Branch generally. This statute, 18 U.S.C. §3624(e), has been interpreted wrongly by the Sixth Circuit initially in United States v. Goins, 516 F.3d 416 (6th Cir.2008), and that faulty reasoning has been adopted by at least three other circuit courts which have addressed the novel issue of "tolling" a term of supervised release, after the person has been released from the custodial portion of the sentence. In Goins, and the cases which have followed its holding, [Pet. 11-17], the Sixth Circuit Court determined that a directive to the Bureau of Prisons as to calculation of a prisoner's release also controls that releasee after being placed under the supervision of the Judicial Branch, through the United States Probation. Petitioner states that this Court's review is warranted to clarify the statutes involved as well as settle the conflict within the circuit courts, as both the Ninth Circuit and the District of Columbia Circuit courts have determined that 18 U.S.C. §3624(e) does not toll or affect the running of a supervised release term, after the individual is placed on supervised release under the supervision of United States Probation.

1.a. Petitioner Jason J. Mont states that the appeals courts of the Fourth, Fifth, Sixth, and Eleventh Circuits have made a fundamental error by interpreting 18 U.S.C.

§3624(e) as a "tolling" mechanism for supervised release sentences that have begun to run after release from the custodial portion of a sentence. Respondent in its Brief in Opposition asserts that various definitions of "imprisonment" serve to support such a reading of section 3624(e), and the backward-looking view of this administrative statute. [Resp. 10-12]. However, Petitioner submits that each opinion from these circuit courts have abdicated its authority to 18 U.S.C. §3624(e) to affect its own judgment based upon a statute which has no affect after a prisoner is released to the jurisdiction of the United States Probation Department.

b. Title 18, United States Code §3624 directs the management of prisoners while in the custody of the Bureau of Prisons. Specifically, §3624(e) directs the release of a prisoner after the service of sentence, unless that prisoner has another, unrelated sentence of imprisonment that the prisoner is serving or will serve after the service of another sentence. The statute directs the Bureau of Prisons to release a prisoner at the expiration of a sentence to the custody of United States Probation, unless the prisoner has another sentence pending, or a detainer has been lodged, which indicates that another jurisdiction has a right to the prisoner's person. The language which has been wrongly interpreted as a directive to toll the running of supervised release after the Bureau of Prisons has released that individual cannot have this affect: the Bureau of Prisons has no control over the released individual, and no authority to stop and start a term of supervised release that has begun running by way of the prisoner's release from imprisonment. Simply put, this provision which has been interpreted by the Sixth Circuit in United States v. Goins, 516 F.3d 416 (6th Cir.2008), as a tolling

mechanism for a federal district court judgment, is neither authority for such "tolling" nor does the statute have the ability to effect such tolling. Once the prisoner has been released to supervision, section 3624(e) has no effect on the running of the supervised release term.

As referenced in his Petition, the statute which governs supervised release, Chapter 227 of Title 18 which controls sentences in federal court, includes Section 3953, which provides for the imposition of supervised release, its applicable terms, the noticing of violations, its modification or revocation, and the authority to extend supervised release after revocation. Section 3583 provides for warrants or summonses to issue, once the district court has been notified of the violative conduct. Importantly, 18 U.S.C. §3583(i) specifically discussed the district court's "power [ ] to revoke a term of supervised release" and impose a sentence or another term of supervised release after the expiration of the original term, by providing for notice through the issuance of a summons or warrant. The fact that this authority is specifically provided for in the statute which governs supervised release, is additional proof that 18 U.S.C. §3624(e)'s directions to the Executive Branch via the Bureau of Prisons as to when a prisoner is to be released to Probation, is not intended to toll supervised release judgment orders imposed by the Judicial Branch under the authority of 18 U.S.C. §3583.

2. Respondent submits that this Court has rejected petitions previously submitted regarding this issue [Resp. 8, 9], ostensibly to reflect that Petitioner Mont's Petition should be similarly dismissed. However, the cases which were referenced in Respondent's Brief were decided five years prior to the District of Columbia circuit

decision in United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016),which interpretation Petitioner endorses and which more clearly defined the split in the circuit courts' reasoning on this important issue. See also, United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999). Indeed, none of the cases rest squarely upon the statutory construction issue as outlined in the petition, nor upon the challenge to the authority for the Executive Branch to toll a judicial order without notice, and with the ability to retroactively invoke such "tolling." Petitioner submits that this Court should find that this clear error in statutory interpretation, along with the division in the circuit courts warrant this Court's review.

* * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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No. 17-8995

In The Supreme Court of the United States

JASON J. MONT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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U.S. District Court
Northern District of Ohio (Youngstown)
CRIMINAL DOCKET FOR CASE
#: 4:05–cr–00229–PAG–2

Case title: United States of America v. Black et al	Date Filed: 05/04/2005 Date Terminated: 12/08/2005

Assigned to: Judge Patricia A. Gaughan

Appeals court case number: 17–3732 6th Circuit

Defendant (2)

Jason J. Mont

21:846 CONSPIRACY TO POSSESS CRACK COCAINE (1)

18:922(g)(1) FELON–IN–POSSESSION OF FIREARMS AND AMMUNITION (8)

Highest Offense Level (Opening)

Felony

Complaints

None

Plaintiff

United States of America

Date Filed	#	Docket Text
05/03/2005	6	Indictment as to William Terry Black (1) count(s) 1, 3–5 & 7, Jason J. Mont (2) count(s) 1, 2, 3, 6 & 8. (C, B) (Entered: 05/04/2005)
09/07/2005		Minutes of proceedings (non–document) before Judge Patricia A. Gaughan.AUSA Linda Barr present. Attorney Damian Billak present for defendant. Change of Plea Hearing as to Jason J. Mont held on 8/30/05. Plea of Guilty entered to Counts 1 & 8 of the Indictment. Referred to Probation for preparation of a Presentence Report. Sentencing set for 12/7/2005 at 11:00 AM before. (Court Reporter Cynthia Lee) (L–C, S) (Entered: 09/07/2005)
12/07/2005	35	Minutes of proceedings before Judge Patricia A. Gaughan. Sentencing held on 12/7/2005 for Jason J. Mont (2), Count 1,

		Committed to the Bureau of Prisons for a period of 120 months, to be followed by 5 years of supervised release; $100.00 special assessment; Counts 2, 3, 6, Dismissed upon the motion of the United States; Count 8, Committed to the Bureau of Prisons for a period of 120 months, to be followed by 3 years of supervised release, both to be served concurrently with the sentence imposed on Count 1; $100.00 special assessment. (Court Reporter Bruce Matthews) (S, DJ) (Entered: 12/14/2005)
12/08/2005	37	Judgment as to Jason J. Mont (2), Count 1, Committed to the Bureau of Prisons for a period of 120 months, to be followed by 5 years of supervised release; $100.00 special assessment; Count 2, 3, 6, Dismissed upon the motion of the United States; Count 8, Committed to the Bureau of Prisons for a period of 120 months, to be followed by 3 years of supervised release, both to be served concurrently with the sentence imposed on Count 1; $100.00 special assessment . Signed by Judge Patricia A. Gaughan on 12/8/05. (S, DJ) (Entered: 12/14/2005)

03/02/2006	49	Transcript of plea Proceedings as to William Terry Black, Jason J. Mont held on 8/30/05 before Judge Gaughan filed manually. To obtain a bound copy of this transcript please contact Court Reporter Cynthia Lee at 216–357–7186. Complete document on file, 22 pages. (C, K A) (H,SP). (Entered: 03/06/2006)
08/24/2009	65	**Order**: Defendant Jason J. Mont's Motion for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense 18 USC 3582 is Granted and defendant's previously imposed sentence of imprisonment of 120 months is reduced to 100 months. Judge Patricia A. Gaughan on 8/20/09. (LC,S) re 63 (Entered: 08/24/2009)
03/05/2012	77	**Order** as to Jason J. Mont: This matter is before the Court upon the Motion of Defendant for a Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 72). The motion is GRANTED. Accordingly, the Court finds defendant is entitled to a reduction under Section 3582(c)(2). After a two–level reduction for substantial assistance, defendant falls within the guideline range of 84–105 months. The Court again sentences defendant to the low–end

	of that range, i.e., 84 months. Defendant moves for a reduction in his firearm sentence. This Court sentenced defendant to 120–months on count 8, which charged defendant as a felon in possession of a firearm. This 120–month sentence was to run concurrently with defendant's 120–month sentence on the drug charge. The Court previously reduced defendant's sentence to 100–months with respect to the drug charge. Defendant now moves for a corresponding reduction with respect to the gun charge. The government does not respond to this request. For the reasons stated in the defendant's motion, and given the government's lack of objection, the sentence with respect to count 8 is reduced to 84 months. Judge Patricia A. Gaughan on 3/5/12. (LC,S) (Entered: 03/05/2012)
01/06/2016	**Order** [non–document] as to Jason J. Mont: The Court is in receipt of a supervision report of 12/3/15 and 1/4/16. Any further violation will result in a hearing. Judge Patricia A. Gaughan on 1/6/16. (LC,S) (Entered: 01/06/2016)

01/29/2016	89 (Court Only)*	**Order** Regarding Violation Report as to Jason J. Mont. The request is denied. The Court is to be notified of the resolution of the state charges. Judge Patricia A. Gaughan on 1/29/16. (LC,S) (Entered: 01/29/2016)
06/13/2016	90 (Court Only)*	Supervision Report
10/25/2016	92	Notice *of Admission of Violation of Supervised Release* as to Jason J. Mont (2) (Adamson, Paul) (Entered: 10/25/2016)
11/01/2016		**Order** [non–document] as to Jason J. Mont: Supervised Release Violation Hearing is set 11/9/16 at 10:30 a.m. Judge Patricia A. Gaughan on 11/1/16. (LC,S) (Entered: 11/01/2016)
11/02/2016	94	**Motion** to continue Supervised Release Violation Hearing by United States of America as to Jason J. Mont (2). (Barr, Linda) (Entered: 11/02/2016)
11/02/2016	95	**Response** in opposition to **Motion** to continue Supervised Release Violation Hearing 94 as to Jason J. Mont (2) (Attachments: # 1 Exhibit Plea Agreement) (Adamson, Paul) (Entered: 11/02/2016)

11/04/2016		**Order** [non–document] as to Jason J. Mont: Government's Motion to Continue Supervised Release Violation Hearing is GRANTED. The Court incorrectly assumed that sentencing had occurred in the state court. The Supervised Release Violation Hearing is continued to 1/4/17 at 11:30 a.m. Judge Patricia A. Gaughan on 11/4/16. (LC,S) re 94 (Entered: 11/04/2016)
12/21/2016		**Order** [non–document] as to Jason J. Mont: In light of the State sentencing date of 1/18/17, Supervised Release Violation Hearing is continued to 1/26/17 at 12:00 p.m. Judge Patricia A. Gaughan on 12/21/16. (LC,S) (Entered: 12/21/2016)
01/19/2017	96	**Motion** to continue Supervised Release Violation Hearing by United States of America as to Jason J. Mont (2). (Barr, Linda) (Entered: 01/19/2017)
01/20/2017	97	Response to Motion to continue Supervised Release Violation Hearing 96 as to Jason J. Mont (2) (Adamson, Paul) (Entered: 01/20/2017)

01/20/2017		Order [non–document] as to Jason J. Mont: Government's Motion to Continue Supervised Release Violation Hearing is Granted. A new date will not be given until after the conclusion of the State sentencing for the conviction that is the basis of the Supervised Release Violation. Judge Patricia A. Gaughan on 1/20/17. (LC,S) re 96 (Entered: 01/20/2017)
03/30/2017	100 (Court Only)*	**Order** Regarding Violation Report as to Jason J. Mont. The Court Orders the Issuance of a Warrant. Judge Patricia A. Gaughan on 3/30/17. (LC,S) (Entered: 03/30/2017)
05/05/2017	102	Notice *of Availability of Defendant Mont for Supervised Release Violation Hearing* as to Jason J. Mont (2) (Adamson, Paul) (Entered: 05/05/2017)
05/09/2017		**Order** [non–document] as to Jason J. Mont: Supervised Release Violation Hearing is set 6/28/17 at 11:00 a.m. Judge Patricia A. Gaughan on 5/9/17. (LC,S) (Entered: 05/11/2017)
05/18/2017	105	**Journal** Entry Order Granting Government's Petition for Writ

		of Habeas Corpus ad prosequendum as to Jason J. Mont. Judge Patricia A. Gaughan on 5/18/17. (LC,S) re 103 (Entered: 05/18/2017)
06/26/2017	107	Memorandum *in Aid of Proceedings on Supervised Release Violation Hearing scheduled for June 28, 2017* by Jason J. Mont (2) (Adamson, Paul) Modified text on 6/27/2017 (B,R). (Entered: 06/26/2017)
06/28/2017	109	**Order** Regarding Supervised Release Revocation Hearing: A Supervised Release Revocation Hearing was held on June 28, 2017. Assistant U. S. Attorney Brad Beeson was present on behalf of the Government. Defendant Jason Mont was present and represented by his counsel Paul Adamson. Probation Officer Kevin Clements was present on behalf of the Probation Department. The defendant waived his right to an evidentiary hearing and admitted to violating the conditions of his supervised release, to wit: new law violations. The Court finds these violations to be a Grade A. This Court hereby sentences the defendant, Jason Mont, to the custody of

		the Bureau of Prisons for a period of 42 months to run consecutive with his state sentence. The Court does not order further supervision. Judge Patricia A. Gaughan. (Court Reporter: Sarah Nageotte) Time: 30 mins. (LC,S) (Entered: 06/29/2017)
07/11/2017	113	**NOTICE OF APPEAL** to the Sixth Circuit Court of Appeals from the 109 Order of 6/28/17, filed by Jason J. Mont (2). Counsel is court appointed (Malone, Vanessa). Modified text on 7/12/2017 (H,SP). (Entered: 07/11/2017)
07/24/2017	116	Transcript of Supervised Release Violation Proceedings held 6/28/2017 before Chief Judge Patricia A. Gaughan filed as to Jason J. Mont (2), re 115 Transcript Request – Appeal Court Reporter Sarah Nageotte, Telephone number (216) 357–7186 or email Sarah_Nageotte@ohnd.uscourts.gov. [18 pages] Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted

must file a notice of intent to redact with the court by 7/31/2017. Redaction Request due 8/14/2017. Redacted Transcript Deadline set for 8/24/2017. Release of Transcript Restriction set for 10/23/2017. (N,SE) (Entered: 07/24/2017)

*These documents have not been made available on the public docket of the Northern District of Ohio in Case #4:05-cr-00229, but are docketed and available on the District Court's docket, to which access is limited to court personnel.

General Docket

United States Court of Appeals
for the Sixth Circuit

Court of Appeals **Docketed:** 07/12/2017
Docket #: 17-3732 **Termed:** 02/15/2018
USA v. Jason Mont
Appeal From: Northern District of Ohio
at Youngstown
Fee Status: In Forma Pauperis

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

JASON J. MONT
Defendant - Appellant

07/12/2017	1	Criminal Case Docketed. Notice filed by Appellant Jason J. Mont. Transcript needed: y. (RMJ) [Entered: 07/12/2017 02:01 PM]
10/10/2017	15	APPELLANT BRIEF filed by Ms. Vanessa Faye Malone for Jason J. Mont. Certificate of Service: 10/04/2017. Argument Request: not requested. [17-3732] (VFM) [Entered: 10/10/2017 10:21 AM]
11/06/2017	16	APPELLEE BRIEF filed by Ms. Laura McMullen Ford for USA. Certificate of Service: 11/06/2017. Argument Request: not requested. [17-3732] (LMF) [Entered: 11/06/2017 10:20 AM]

11/20/2017 18 REPLY BRIEF filed by Attorney Ms. Vanessa Faye Malone for Appellant Jason J. Mont. Certificate of Service: 11/20/2017. [17-3732] (VFM) [Entered: 11/20/2017 12:48 PM]

01/02/2018 19 SUBMISSION ON BRIEFS date set for Thursday, March 8, 2018. (MCP) [Entered: 01/02/2018 02:42 PM]

02/15/2018 20 OPINION filed : AFFIRMED. Decision not for publication. Karen Nelson Moore (AUTHORING), Deborah L. Cook, and David W. McKeague, Circuit Judges. (CL) [Entered: 02/15/2018 11:08 AM]

03/09/2018 22 MANDATE ISSUED with no costs taxed. (BSM) [Entered: 03/09/2018 03:05 PM]

05/22/2018 23 U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Jason J. Mont. Supreme Court Case No:17-8995, 05/15/2018. (CL) [Entered: 05/22/2018 03:28 PM]

11/08/2018 24 U.S. Supreme Court letter filed: The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are GRANTED. [23] Supreme Court Case No: 17-8995, 11/02/2018.. (CL) [Entered: 11/08/2018 02:24 PM]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	JUDGE PATRICIA A. GAUGHAN
Plaintiff,	)	CASE NO.: 4:05CR229
-vs-	)	ORDER REGARDING SUPERVISED RELEASE REVOCATION HEARING
JASON MONT,	)	
Defendant,	)	

A Supervised Release Revocation Hearing was held on June 28, 2017. Assistant U. S. Attorney Brad Beeson was present on behalf of the Government. Defendant Jason Mont was present and represented by his counsel Paul Adamson. Probation Officer Kevin Clements was present on behalf of the Probation Department. The defendant waived his right to an evidentiary hearing and admitted to violating the conditions of his supervised release, to wit: new law violations. The Court finds these violations to be a Grade A.

This Court hereby sentences the defendant, Jason Mont, to the custody of the Bureau of Prisons for a period of 42 months to run consecutive with his state sentence. The Court does not order further supervision.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
Patricia A. Gaughan
United States District Court
Chief Judge

Date 6/28/17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	Case No. 4:05-cr-229 – 2 Cleveland, Ohio
Plaintiff,	WEDNESDAY, JUNE 28, 2017
vs.	
JASON J. MONT,	
Defendant.	

TRANSCRIPT OF SUPERVISED RELEASE
VIOLATION PROCEEDINGS BEFORE
THE HONORABLE PATRICIA A. GAUGHAN
UNITED STATES CHIEF JUDGE

APPEARANCES:

For the Government:	Brad Beeson, *Assistant United States Attorney*
For the Defendant:	Paul F. Adamson, *Esquire*
For Probation:	Kevin Clements
Chief Court Reporter:	Sarah E. Nageotte, RDR, CRR, CRC United States District Court 801 West Superior Avenue Court Reporters 7-189 Cleveland, Ohio 44113 (216) 357-7186

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

[2] (Proceedings commenced at 11:04 a.m.)

– – –

THE COURT: Mr. Mont, you may approach the podium with counsel.

We're here in the matter of United States of America versus Jason Mont, Case Number 05-cr-229.

Present in Court is Mr. Mont. Is that correct, sir?

THE DEFENDANT: Yes.

THE COURT: Represented by his attorney, Mr. Paul Adamson.

On behalf of the Government, I have Linda Barr down here, but it's Brad Beeson.

And on behalf of Probation, Mr. Kevin Clements.

PROBATION OFFICER: Good morning, Your Honor.

THE COURT: We're here today for purposes of a supervised violation – supervised release violation hearing.

I do, in fact, have a violation report dated March 30th of this year. According to this report, there are two alleged violations.

The first is a new law violation, Case Number 2016 CR 555, defendant was convicted of five counts of trafficking in cocaine, felonies of the fifth degree; one count of trafficking in cocaine, a felony of the fourth

degree; one [3] count of trafficking in cocaine, a felony of the third degree; one count of trafficking in marijuana, a felony of the second degree; one count of engaging in a pattern of corrupt activity, a felony of the first degree.

The second alleged violation is a new law violation, 2015 CR 291, defendant was convicted of two counts of trafficking in marijuana, both felonies of the second degree.

On behalf of your client, Mr. Adamson, do you wish for this Court to hear testimony regarding these alleged violations or do you waive the taking of testimony and admit?

MR. ADAMSON: Your Honor, we would waive the taking of testimony and admit that these offenses would constitute violations of his supervised release.

THE COURT: Do you have –

MR. ADAMSON: We have a jurisdictional issue to address with the Court, but that's separate and apart from this.

THE COURT: Do you understand, sir, what your attorney just said to me?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are you – are you, in fact, admitting that you were convicted in these two cases?

THE DEFENDANT: Yes, ma'am.

[4] THE COURT: Sir, based upon your admission, I do, in fact, find you to be in violation of supervised release, and I will put an order on that you are waiving the taking of testimony regarding the allegations.

This Court does, in fact, find them to be a Grade A, both of them to be Grade A violations, and with a criminal history category of IV, you are looking at an advisory sentencing guideline range of 37 to 46 months.

The Court is in receipt of the defendant's memorandum. Specifically, it's entitled Defendant Mont's memorandum in aid of proceedings on supervised release violation hearing.

You, Mr. Adamson, have specifically questioned whether the jurisdiction – whether this Court has jurisdiction to proceed with the hearing.

Do you wish to be further heard than what is contained in your memo?

MR. ADAMSON: Just to this extent, Judge. I wasn't certain when I put – when I filed the memorandum as to whether or when a – a warrant or summons had been issued to Mr. Mont.

Mr. Mont now tells me that he was served with a warrant on either March 22nd or March 23rd of 2017, and he advises me that that's – that was the first and only warrant or summons that he was served with relative to this supervised release violation.

[5] His – we believe that his supervised release expired on March 6th of 2017, and it's, then, our belief, assuming those facts are correct, that the Court would be without jurisdiction pursuant to 18 U.S.C. 3583(i), which, of course, extends the Court's power beyond the period of expiration but only if a warrant or summons is issued prior to revocation.

THE COURT: Mr. Beeson.

MR. BEESON: Your Honor, I've had an opportunity to review this issue, and the Government believes that *Madden*, which is 5 F.3d 601, at page 608, applies, and this is almost exactly –

THE COURT: You mean 515?

MR. BEESON: Excuse me, Your Honor.

THE COURT: 515 F.3d 601?

MR. BEESON: Yes.

And, then, at page 608 is where the Court makes its holding.

But the fact pattern is similar to this case, Your Honor, in which the defendant in that case had numerous interactions with the Court and Probation concerning pending criminal charges in the state system, and those essentially tolled or allowed the Court to have jurisdiction outside of the normal period of supervised release, which is exactly what's going on here, Your Honor.

[6] And for those reasons, the Government believes that the Court still has jurisdiction in this matter.

THE COURT: Mr. Clements.

PROBATION OFFICER: Yes, Your Honor.

My understanding in this case was Mr. Mont went into custody back on May 26th of 2016. His supervision was tolled by our office on June 1st of 2016, in that Mr. Mont made himself unavailable for supervision.

Those cases that we were looking at through Criminal Procedures, it appears that if individuals are available for supervision, a warrant or a summons has to be issued.

It's our policy, according to 18 U.S.C. 3564(b) and 3624(e), that terms of supervised release are tolled, do not run while the offender is in prison for 30 or more consecutive days in connection with a new charge or conviction.

In this case, Mr. Mont was in prison for nine months prior to his supervision ending, and when I review the record, a lot of these delays were caused by him having new attorneys, firing the attorney, having a new attorney, firing an attorney, having a new attorney, so it was just going on and on and on for a very lengthy period of time.

But in our case, like I said, his supervision was tolled way back on June 1st. He wasn't available for supervision. He wasn't on the street. We were not –

[7] THE COURT: I'm sorry. He wasn't on –

PROBATION OFFICER: He was on – he was in jail, so he wasn't available for us to supervise on the street.

THE COURT: So I am correct that he was in custody from June until today?

PROBATION OFFICER: Yeah. He went into custody on May 26th, 2016, and he remained in custody to this date.

THE COURT: For the record, Mr. Clements, I – my information is the same as what you have just stated. And let me go further.

When I received notification of these alleged violations, I did, in fact, give notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016.

On November 4th of 2016, I granted a continuance and informed all parties involved that I was waiting until the state proceedings were concluded because the very conduct that formed the violations in my case were, in fact, the state law violations that I was waiting to be concluded. There were no other alleged violations. So I continued it to January 4th of 2017.

I received notification that the sentencing date was going to be on January 18th, so on December 21st of 2016, I [8] continued my hearing until January 26th, and I specifically indicated, and the docket reflects, that I was doing so in light of the sentencing date of January 18th.

I then learned that the sentencing was not going to go forward on January 26th as a result of the defendant's own motion asking that the sentencing be continued, so I continued my hearing, and I did that, the entry is January 20th, 2017, and I specifically indicated that it would be continued until the sentencing was concluded.

I then learned that the sentencing went forward. I received a notice from the defendant – from defense counsel on May 5th, and it was a document entitled notice of availability of defendant for supervised release violation hearing.

When I received that notice, I, on May 9th, set the supervised release violation hearing for today, June 28th, and I gave that amount of time because it was necessary for the United States Marshal to actually get him in our custody. And I have been informed over many years of being on the bench that the Marshal needs that kind of time in order to bring someone from state custody into our custody.

So I then look at the plain language of 3583(i), and that section states that a Court retains the power to impose a sanction for a supervised release violation beyond the expiration of the term of supervised release for any period [9] reasonably necessary for the adjudication of matters arising from its expiration.

So the question then becomes is the time from – from the time of the plea on October 7th of 2016 until today, June 28th, 2017, was that period of time reasonably necessary?

And this Court – because this Court does, in fact, acknowledge that if all things went as they should have gone, supervision would have expired on March 7th, 2017.

This Court finds all of that time was, in fact, reasonably necessary because it was the actions of the defendant that caused the various extensions of time of having the supervised release violation hearing.

Further, this Court finds that that period of time certainly did not prejudice the defendant.

So, therefore, this Court concludes that I do, in fact, have jurisdiction over this matter.

So we are now going to proceed to sentencing.

And, again, Mr. Adamson, I have reviewed your memorandum, and I want you to be assured I have thoroughly read it and – and considered what you have in your memorandum.

However, you certainly are free to speak.

MR. ADAMSON: Thank you, Judge.

First, I want to say, and I know you know this, that [10] Jason meant no disrespect to this Court by raising the jurisdictional issue.

THE COURT: Oh.

MR. ADAMSON: I felt I had a duty to do that, just for record purposes.

THE COURT: Oh, absolutely not.

MR. ADAMSON: Thank you, Judge.

THE COURT: No. No. No. You do have a duty to raise any issues, and I certainly would never hold that against any defendant.

And, Mr. Mont, I want you to be assured, by your attorney raising the jurisdiction issue, it doesn't negatively affect you whatsoever. That was his duty.

MR. ADAMSON: All right.

Judge, secondly, anything I say, Judge, is not intended to minimize – I mean, he went back to what he was doing when he got sentenced by you, and he did it twice, and there's nothing I can say that would be intended to minimize that.

He sold – he had a marijuana charge in 2014, and then he sold cocaine in 2016, and did all this under your supervision, and we have no excuse for that.

Just by way of explanation, I guess, a couple things quickly, if I can.

You know, one is that Jason himself, and I think he [11] indicated that, and he's told me from the start, he relapsed into drug use. Actually, his drug of choice was that syrupy stuff that they drink to get high and he – and he started using drugs again.

And when he started using drugs again, he got back into the drug culture and he became involved in drug dealing again.

As it happens, the quantities involved here, at least, you know, fortunately or unfortunately for him, were really minimal, arguably minimal. The total amount of marijuana was 12 pounds. The total amount of cocaine was 12 grams.

There were just multiple small quantity buys as it related to the cocaine, and that's what he was doing, he was using and he was selling and he was selling really small quantities. No excuse for that.

But – but some – we hope that maybe you find that that sets him apart a little bit from somebody who's dealing in mass quantities of drugs, and especially some of the horrible drugs, the more horrible drugs, let's put it that way, the heroin and fentanyl and those things.

So for these quantities – and it was a rather odd prosecution. Well, there was an odd aftermath to the prosecution. I think the prosecutor who prosecuted that case is no longer with the county, and the – and the detective that was involved with it is no longer with the [12] task force, and – but that – you know, that's his fault. Jason takes his responsibility.

The penalty part of it, the six years, they charged it as a – as a – basically, a state RICO charge. They added that additional charge and that's what made it the first degree felony, and, because of this, he ended up with the sentence he got.

Now, I want you to know also, Judge, that – you know, that we really weren't – it wasn't gamesmanship

so much in terms of bouncing around the hearing dates. We really weren't trying to leapfrog you. We brought the case to your attention back in November. We're the ones who first brought it to your attention in November of '16 to come here.

And I'm not trying to revisit that jurisdiction issue.

THE COURT: But, Mr. Adamson, with all due respect, even if your intent was to leapfrog, again, you can try it.

MR. ADAMSON: Right. Fair enough.

THE COURT: You can try it.

MR. ADAMSON: But what happened was we had a couple odd –

THE COURT: If that was your intent, it didn't work.

MR. ADAMSON: No? Okay.

[13] THE COURT: But you can try it.

MR. ADAMSON: I appreciate that.

But I just want you to know, if you look at the pleadings, what happened, he pled, and then there was an issue, the *Gonzales* case came out at the state court and there was an issue about the testing and whether or not there were any degrees of felonies for cocaine because of some glitch in the language, and so, I had to bring that to the Court's attention.

And then, before I – before we ever got to the motion to withdraw his plea, the Ohio Supreme Court reversed itself, you might remember, they made a decision. Anyway, I don't – but that's what was going on there.

Well, in any event, because of the nature of the charges, because of his history, because of his exposure on the RICO part of the charge, there was a negotiated plea and it was for six years, I think the Court is aware.

I've got the journal entries. I don't know if the Government would stipulate that he received a six-year sentence.

THE COURT: Yeah. No. It's – it's in the report.

MR. ADAMSON: Good.

Okay. That being the case, and I'll wrap up, Judge, that's a lot of time. It's marijuana and cocaine. No [14] excuse. I'm just asking you to find that that's enough time.

I – I believe this Court has jurisdiction – it has discretion under 18 U.S.C. 3584 to, whatever sanction you impose, to either order it consecutive or concurrent, and I believe that's the law. I'm going to ask you, whatever sanction you impose, to consider imposing that concurrent to the six-year sentence.

If he had gotten some lesser sentence – and I know that was one of the concerns that the Government had when they responded to my first motion to have the

supervised release hearing back in November of '16, that they mentioned that there's a variety of reasons and sometimes it's to get the state sentence to run concurrent, pushing the cost and burden of housing an inmate off to the federal courts.

Well, that's not going to happen here. He's in state custody. If – if you're kind enough to order a concurrent sentence, he'll stay in state custody. He'll be subject to a – a five-year term of supervised release. I may have misspoke. It's mandatory time. I can't remember if it's three or five, but he's going to be on supervised release when he's done with his sentence, so he's going to be supervised when released. Of course, this Court can extend supervised release again here.

And I just ask the Court to – to consider that six [15] years would satisfy the principles and purposes of sentencing, and – and as imposed in the state court, and I'd ask you that whatever sanction you impose to permit that to be served concurrent to that state sentence.

And Jason would like to briefly address you as well.

THE COURT: Certainly. Do you have anything to say?

THE DEFENDANT: Yes.

Your Honor, being on both sides of the fence, as a drug dealer and a drug addict, I – you know, I know a little bit about both of them.

So when I got sentenced and I was in Lorain waiting to go to prison, I had an awakening. And when you're a drug user or a drug addict, you – have you ever heard you have to be ready or something drastic has to happen, you have to hit rock bottom to have an awakening?

Well, my awakening was I was listening to the radio, it was the news, and an 11-year old girl overdosed on heroin, and they walked into her bedroom and she had three bags of heroin, one was open and two was closed. They called the paramedics and they had to use Narcan on her. And she was in critical condition, last I heard.

And that was my awakening because I said that was just a baby. And how could they, you know, the people – how – how did she get it? You know, who would sell her that [16] heroin? And it just made me mad because she's just a baby and it's – who would hurt her like that?

And, then, I said was I – then I thought, was I hurting people? And I probably was. I was hurting their families, them.

And I want to – I want to help this epidemic now. I want to use the time I have, and I want to help. You know, I've been thinking of ways to help people. And Kevin, he goes – he takes prisoners – you take prisoners back to prison to talk to them?

PROBATION OFFICER: Yes.

THE DEFENDANT: And that's a good program, but I think we need to take them into the schools, too, to stop the epidemic. Not colleges, not high schools, grade schools, fourth through eighth grade, and show them videos of people overdosing and show them videos of people using Narcan and stop it before it starts and scare them so they won't start the epidemic, because when you're an adult, you have to be ready to stop.

But a kid has a choice, and, like, an 11-year old kid, I just don't understand how that got into her hands or how – who told her to use that, and it just made me mad, Your Honor.

So with that said, I apologize that I'm here, and I just want to use this time that I got to better myself.

[17] THE COURT: Mr. Beeson.

MR. BEESON: Based on the offense, which it's been discussed, and his criminal history, the defendant's criminal history, the recommended sentence is between 37 to 46 months.

And my understanding, also, is that it's recommended that the sentence be consecutive with his state sentence, Your Honor.

So the Government, given the severity of the offenses and his criminal history, the Government recommends that he be sentenced at the high end of the guidelines, 46 months, and that sentence be consecutive with his current state sentence, Your Honor.

THE COURT: Anything further, Mr. Clements?

PROBATION OFFICER: Your Honor, I would just recommend a guideline sentence. The statute suggests, upon a finding of a Grade A or B violation, the sentence, that it be run consecutively.

THE COURT: It is the judgment of this Court, sir, that you be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 42 months. And it will be consecutive.

The Court notes this is your eighth – you now have 18 convictions, and the overwhelming majority are for drugs and guns. This Court cannot justify a sentence any lower than [18] that.

There will be no further supervision. Good luck to you, sir.

MR. ADAMSON: Thank you.

– – –

(Proceedings concluded at 11:26 a.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

/s/ Sarah E. Nageotte *7/24/2017*
SARAH E. NAGEOTTE, RDR, CRR, CRC DATE

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Filed Name: 18a0078n.06

No. 17-3732

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, **Plaintiff-Appellee,** v. JASON J. MONT, **Defendant-Appellant.**	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO **OPINION** (Filed Feb. 15, 2018)

Before: MOORE, COOK, and McKEAGUE, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Defendant-Appellant Jason Mont appeals the district court's revocation of his term of supervised release, arguing that the district court lacked jurisdiction to impose the revocation because his term of supervised release had already expired. Because binding precedent instead makes clear that Mont's term of supervised release was paused by his imprisonment in connection with a new state conviction, we conclude that the district court did indeed have jurisdiction and thus **AFFIRM**.

I. BACKGROUND

Because Mont's challenge hinges on a few key dates, two sections of statutory text, and one case, we review the facts here only briefly. In December 2005, Mont was convicted of violating 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and 18 U.S.C. § 922(g)(1), and sentenced to 120 months of imprisonment to be followed by five years of supervised release. R. 37 (2005 Crim. J. at 1–3) (Page ID #109–11). He appears to have been released from prison on March 6, 2012. *See* R. 90 (Supervision Report at 1) (Page ID #415); *see also* Inmate Locator, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/inmateloc/(listing a release date of "03/06/2012" after a search for "Jason J. Mont"); Appellant's Br. at 4; Appellee's Br. at 4. His release from prison started the clock ticking on his five years of supervised release, *see* 18 U.S.C. § 3624(e)—a countdown slated to end on March 6, 2017.[1]

Unfortunately, that five-year period was not a smooth one for Mont. In January 2016, his probation officer submitted to the district court a violation report alleging that Mont had failed to comply with the terms of his supervised release in two ways: (1) by testing positive during two drug tests for controlled

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[1] Or possibly March 7, 2017. *Compare* R. 90 (Supervision Report at 1) (Page ID #415) (March 6), *with* R. 89 (First Violation Report at 1) (Page ID #411) (March 7), *and* R. 100 (Second Violation Report at 1) (Page ID #454) (same). But as the Government concedes, "[t]he one-day difference does not affect the outcome here." Appellee's Br. at 4 n.1. Both to give Mont the benefit of the ambiguity and because March 6 appears more accurate, we use that date here.

substances (Oxycodone and Oxymorphone) for which he lacked a prescription, and (2) by using some "unknown" liquid to try to pass two subsequent drug tests. R. 89 (First Violation Report at 1) (Page ID #411). Moreover, Mont's probation officer noted, Mont had been "secretly indicted by the Mahoning County Grand Jury on two counts of Trafficking in Marijuana" back in March 2015. *Id.* At the time of the probation officer's report, those state charges were still pending, and a jury trial was scheduled for March 14, 2016. *Id.* at 1–2 (Page ID #411–12). In light of the pending state-court case, the district judge declined to issue a warrant, and instead asked that the court "be notified of the resolution of the state charges." *Id.* at 4 (Page ID #414).

Mont's state jury trial ended up being postponed. R. 90 (Supervision Report at 1) (Page ID #415). Nevertheless, as his probation officer reported, Mont was arrested on June 1, 2016, as a result of a new secret indictment from Mahoning County, this one for "five counts of Trafficking in Cocaine." *Id.* He was "incarcerated in the Mahoning County Jail," *id.* at 2 (Page ID #416), and, as he concedes, remained in state custody going forward, *see* R. 100 (Second Violation Report at 2) (Page ID #455); *see also* Appellant's Br. at 6.[2]

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[2] Again, there is some minor confusion regarding the particular date. At Mont's revocation hearing in federal court, his probation officer testified that Mont "went into custody on May 26th, 2016, and he remained in custody to this date." R. 116 (Violation Hr'g Tr. at 7) (Page ID #490). But the May 26 date does not appear to be otherwise reflected in the district-court record, and Mont instead cites the June 1 date, *see* Appellant's Br. at 6. (For its part, the Government repeatedly gives the operative date as "March

In October 2016, Mont entered into a plea agreement with the Mahoning County prosecutors, pleaded guilty to some of his state court charges in exchange for a predetermined six-year sentence, R. 95-1 (Def.'s Mot. for Continuance, Ex. A) (Page ID #430–38), and filed a written admission in federal court acknowledging that he had violated the terms of his supervised release and requesting a hearing on the matter, R. 92 (Def.'s Admission) (Page ID #419). But Mont had not yet been officially sentenced for the new, state-court convictions. Though the district court initially set a November 2016 date for Mont's supervised-release-violation hearing, a flurry of continuances followed in both state and federal court. *See, e.g.*, R. 94 (Gov't's Mot. for Continuance at 1) (Page ID #424). Ultimately, on March 21, 2017, Mont was sentenced in state court to a total of six years' imprisonment, encompassing multiple concurrent terms stemming from the various state charges on which he had been indicted and arrested. *See* R. 100 (Second Violation Report at 1) (Page ID #454). Importantly, Mont's state-court sentencing judge credited the roughly ten months that Mont had already been incarcerated pending a disposition as time served. *See State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017);

26, 2016." Appellee's Br. at 5–6, 10, 14–15. That date, also not reflected in the record, is presumably an accidental misrendering of "May" from the probation officer's testimony.) Giving Mont the benefit of the doubt, we treat June 1, 2016, as the beginning of Mont's state imprisonment, noting that Mont's challenge does not hinge on this temporal difference either.

State v. Mont, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017).[3]

On March 30, 2017—now more than three weeks after Mont's term of supervised release had initially been set to expire—Mont's probation officer updated the district court regarding Mont's state-court convictions and sentences. R. 100 (Second Violation Report at 1) (Page ID #454) (same). The district court ordered the issuance of a warrant that same day, *id.* at 4 (Page ID #457); R. 101 (Arrest Warrant at 1) (Page ID #458), and set a supervised-release-violation hearing for June 28, 2017, R. 103 (Pet. for Writ of Habeas Corpus ad Prosequendum at 1) (Page ID #462).

Two days before that hearing, Mont's counsel filed a memorandum contending that "Mont's period of supervised release expired on March 6, 2017," and thus disputing the district court's jurisdiction to adjudicate his otherwise-admitted violation. R. 107 (Def.'s Violation Hr'g Mem. at 2) (Page ID #473). At the hearing, the district court addressed Mont's challenge and "conclude[d] that [it did], in fact, have jurisdiction over this matter." *See* R. 116 (Violation Hr'g Tr. at 9) (Page ID #492). In explaining its conclusion, the district court first stated that it had "give[n] notice by way of a

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[3] As the Government notes, Appellee's Br. at 15 n.2, "it is well-settled that federal courts may take judicial notice of proceedings in other courts of record." *Lyons v. Stovall*, 188 F.3d 327, 333 (6th Cir. 1999) (punctuation and citation removed). We do so here, where the relevant records were publicly available from the Mahoning County Courts, *see* CourtVIEW, MAHONING COUNTY COURTS, https://courts.mahoningcountyoh.gov/eservices/home.page.2.

summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." *Id.* at 7 (Page ID #490). The district court then made reference to 18 U.S.C. § 3583(i), stating that under that provision "a Court retains the power to impose a sanction for a supervised release violation beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising from its expiration."[4] *Id.* at 8–9 (Page ID #491–92). Though the district court acknowledged that, "if all things went as they should have gone, supervision would have expired on March 7th, 2017," the district court reasoned that the extra "time was, in fact, reasonably necessary because it was the actions of the defendant that caused the various extensions of time of having the supervised release violation hearing." *Id.* at 9 (Page ID #492).

The district court proceeded to sentence Mont to 42 months of imprisonment, to be served consecutively to Mont's imprisonment for his state-court convictions. *Id.* at 17 (Page ID #500). Mont timely appealed on the jurisdictional question.

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[4] For maximal clarity, we note here that this expression of the statutory rule left off a key conditional phrase. In fact, a court's "power . . . to revoke a term of supervised release . . . extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before [that term's] expiration *if*, before [that term's] expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphasis added). As will be apparent, however, this accidental omission does not affect the outcome of this case.

II. DISCUSSION

A. Standard of Review

"We review de novo [a] district court's . . . determination that it had jurisdiction to revoke [a defendant's] supervised release." *United States v. Cross*, 846 F.3d 188, 190 (6th Cir. 2017).

B. The District Court's Jurisdiction

The math in this case is simple: Mont's supervised-release clock was initially set at five years. If it ticked its way down inexorably, then time would have expired on March 6, 2017, and the district court would have lacked jurisdiction to impose a violation at any later date.

But the clock's countdown was not inexorable. Two statutory provisions explain (1) how time could have been extended and (2) how the clock could have been paused. First, "[t]he power of the court to revoke a term of supervised release . . . *extends beyond the expiration of* the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration *if, before its expiration*, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphases added). That is how time could have been extended. *See United States v. Ossa-Gallegos*, 491 F.3d 537, 543 n.5 (6th Cir. 2007) (en banc). Second, while a "term of supervised release commences on the day the person is released from imprisonment," that term "*does not run* during any period in which the person is imprisoned *in*

connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. § 3624(e) (emphases added). That is how the clock could have been paused.

This second, clock-pausing provision presents an interpretive riddle that we took on in *United States v. Goins*, 516 F.3d 416 (6th Cir. 2008): does thirty days or more of pretrial detention for a charge that results in (and is credited to) a conviction count as "imprisonment in connection with" that conviction? If so, we would understand a defendant's supervised-release clock as having been stopped during any days that defendant spent incarcerated after an indictment, at least so long as (1) that indictment resulted in a conviction and (2) that incarceration was credited as time served for the conviction. And that, in *Goins*, is what we held: "that [1] when a defendant is held for thirty days or longer in pretrial detention, and [2] he is later convicted for the offense for which he was held, and [3] his pretrial detention is credited as time served toward his sentence, then the pretrial detention is 'in connection with' a conviction and tolls the period of supervised release under § 3624." *Id.* at 417. And we explicitly rejected any "temporal limitations" for this rule, finding none in the statute's text and thus acknowledging that our rule might "require a 'backward-looking analysis'" at times. *Id.* at 422 (quoting *United States v. Morales-Alejo*, 193 F.3d 1102, 1104 (9th Cir. 1999)).

As may be clear by now, *Goins* resolves this case.[5] Mont was held for roughly ten months in pretrial detention. *See* R. 90 (Supervision Report at 1–2) (Page ID #415–16); R. 100 (Second Violation Report at 1–2) (Page ID #454–55). He was later convicted of the offenses for which he was held. *See* R. 100 (Second Violation Report at 1–2) (Page ID #454–55). That pretrial detention was credited as time served toward his sentence. *State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017); *State v. Mont*, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017). Accordingly, Mont's term of supervised release did "not run during" those ten months (nor, for that matter, during the post-conviction incarceration that followed). *See* 18 U.S.C. § 3624(e); *Goins*, 516 F.3d at 417. This means that there was still quite a bit of time left on the clock when the district court issued its warrant on March 30, 2017, R. 101 (Arrest Warrant at 1) (Page ID #458), triggering the

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[5] Because it does, we need not consider the Government's alternate argument for affirmance: that the district "court's issuance of a summons before [Mont's] supervision expired" triggered an extension under § 3583(i). Appellee's Br. at 13. While it is true that the district court said during Mont's hearing that it had issued such a summons in November 2016, R. 116 (Violation Hr'g Tr. at 7) (Page ID #490), Mont contends "that there is no evidence on the record which indicates that the district court actually filed" such a summons, Reply Br. at 3. We too have failed to detect any such evidence in the record, and the Government has not pointed us to any, citing only the district court's own statement. *See, e.g.*, Appellee's Br. at 13. Nevertheless, we leave this question aside, as *Goins* requires that we affirm regardless.

"extension" that 18 U.S.C. § 3583(i) in turn provides.[6] The district court, in other words, had jurisdiction.

Mont seeks to avoid this result in a few ways, mostly by arguing two variants of the idea that "the district court . . . failed to take the steps that were necessary to preserve its jurisdictional authority," Appellant's Br. at 21. First, he argues that the district court neglected to mention *Goins* or "make any finding regarding tolling, and instead relied upon Section 3583(i)." *Id.* at 22. This is essentially a forfeiture argument: that because the district court did not invoke *Goins* or § 3624(e)'s clock-pausing powers, those powers were never activated in the first place and cannot be activated now.

This argument fails for several reasons. First of all, as the Government notes, "Mont presents no authority establishing that the court was required to take affirmative steps to 'preserve' authority during a tolling period." Appellee's Br. at 16. Indeed, nothing in

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[6] Of course, that extension was not itself necessary in this case, because, given the length of Mont's incarceration, there would have been time left on the clock in any event when Mont's supervised-release-violation hearing finally occurred on June 28, 2017. But that may not always be the case, as indeed it was not in *Goins* itself. *See Goins*, 516 F.3d at 418–19. In other words, the interaction between the two statutory provisions can be crucial: in some cases § 3624(e)'s having briefly paused a defendant's supervised-release clock will make the difference as to whether there was still time remaining when a court's issuance of a warrant or summons in turn triggered § 3583(i)'s extension, even though the resulting hearing itself would have otherwise impermissibly fallen "beyond the expiration of the term of supervised release," *see* 18 U.S.C. § 3583(i).

Goins suggests that a district court must invoke § 3624(e) specifically for its statutory commands to be in effect. Second, as the Government also notes, Appellee's Br. at 19, "[a] decision below must be affirmed if correct for any reason, including a reason not considered by the lower court." *United States v. Henderson*, 626 F.3d 326, 334 (6th Cir. 2010) (quoting *Russ' Kwik Car Wash, Inc. v. Marathon Petroleum Co.*, 772 F.2d 214, 216 (6th Cir. 1985)). We cannot, in other words, rule that the district court lacked jurisdiction simply because we would have explained why the district court had jurisdiction differently. Nor, third, would that kind of approach to federal-court jurisdiction fit with longstanding federal-court doctrine, which does not treat our jurisdiction as the kind of thing that can be squandered by design *or* inattention. *Cf. Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) ("Unlike an objection to venue, lack of federal jurisdiction cannot be waived or be overcome by an agreement of the parties. An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review.").

Mont also offers a second spin on this necessary-steps argument: that § 3624(e) pauses the clock only when a court has first undertaken the procedures—issuing a summons or warrant—outlined in § 3583(i). He points out, for example, that "this Court has specifically rejected [§ 3583(i)] as a tolling mechanism," Appellant's Br. at 22, and argues that § 3583(i) instead "permits a delayed revocation hearing only when the district court has preserved its power, or jurisdiction,

to act beyond the termination of a sentence by means of issuing a summons or warrant," Reply Br. at 6.

This argument also fails. Again, there is the problem that Mont offers no authority or explanation for why a warrant or summons under § 3583(i) would serve as a necessary precondition for § 3624(e). But more importantly, nothing in the text of the statutes suggests as much, and *Goins* itself contradicts Mont's theory. *See Goins*, 516 F.3d at 418–19 (noting that the problem presented by the case was that § 3583(i) was *not satisfied* but that § 3624(e) could nevertheless render the relevant "warrant timely," *id.* at 419). And while Mont is correct that § 3583(i) is not what we have called "a tolling provision," *see Ossa-Gallegos*, 491 F.3d at 543 n.5, that fact is irrelevant. Mont's appeal fails, rather, because § 3624(e) *is* what we have called a tolling provision.[7]

What remains of Mont's argument amounts essentially to an attack on *Goins* itself and an endorsement of the D.C. Circuit's recent decision to the contrary, *see United States v. Marsh*, 829 F.3d 705 (D.C. Cir. 2016). That is fair enough: there is indeed a circuit split on this question. *Compare United States v. Ide*, 624 F.3d

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[7] That said, what the word "tolled" means turns out to be a thorny question, susceptible to two different interpretations. *See generally Artis v. District of Columbia*, ___ S. Ct. ___, 2018 WL 491524 (2018) (addressing whether 28 U.S.C. § 1367(d) serves to pause state statute-of-limitations periods or to provide a grace period after those periods expire). Thankfully, that ambiguity is not at issue here, as the plain text of § 3624(e) makes clear that it is, more precisely, a clock-pausing provision.

666, 667 (4th Cir. 2010) (holding that pretrial detention can qualify as imprisonment under § 3624(e)), *United States v. Johnson*, 581 F.3d 1310, 1312–13 (11th Cir. 2009) (same), *United States v. Molina-Gazca*, 571 F.3d 470, 471 (5th Cir. 2009) (same), *and Goins*, 516 F.3d at 417 (6th Cir.) (same), *with Marsh*, 829 F.3d at 705 (D.C. Cir.) (holding that pretrial detention does not qualify), *and Morales-Alejo*, 193 F.3d at 1106 (9th Cir.) (same). But *Goins* is a published decision, and "a published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" *Sykes v. Anderson*, 625 F.3d 294, 319 (6th Cir. 2010) (quoting *Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). *Goins* therefore forecloses Mont's challenge to the district court's jurisdiction.

III. CONCLUSION

Under our binding precedent interpreting federal law, the clock on Mont's supervised-release term stopped ticking the day that Mont was incarcerated in Mahoning County in connection with his eventual convictions, given that his incarceration was greater than or equal to thirty days and credited as time served for those convictions. Consequently, there was still time remaining on Mont's supervised-release clock—and therefore jurisdiction—when the district court issued its warrant (and, for that matter, when it ultimately

adjudicated Mont's supervised-release violation). We accordingly **AFFIRM** the district court's judgment.

No. 17-8995

In The
Supreme Court of the United States

JASON J. MONT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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QUESTION PRESENTED

Whether a statute directed to the administration of prisoners serves as authority to suspend the running of the supervised release portion of a sentence, when such "tolling" is without judicial action and requires the term "imprisonment" to include pretrial detention prior to an adjudication of guilt. Is a district court required to exercise its jurisdiction in order to suspend the running of a supervised release sentence as directed under 18 U.S.C. §3583(i) prior to the expiration of the term of supervised release when a release is in pretrial detention, or does 18 U.S.C. §3624(e) toll the running of supervised release while in pretrial detention?

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OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals for the Sixth Circuit was not officially reported, but the opinion may be found at 723 Fed.Appx. 325. J.A. 33-46.

JURISDICTION

The Court of Appeals entered judgment on February 15, 2018. Pet. App. 1a. The petition for writ of certiorari was timely filed on May 15, 2018, and granted on November 2, 2018. J.A. 33. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The following United States Code sections are implicated in resolving the Question Presented. The full text is contained in the Statutory Appendix to Petitioner's Merit Brief.

> 18 U.S.C. §3583. **Inclusion of a term of supervised release after imprisonment**
>
> (i) Delayed revocation.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the

adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

18 U.S.C. §3624. **Release of a Prisoner**

(e) Supervision after release.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of

failure to pay such fines under sections 3611 through 3614 of this title.

STATEMENT

The court of appeals has interpreted a statute directed to post sentence administration of individuals who have been convicted of a federal offense and whose sentence requires service of a term of supervised release in a manner which strains the plain language and structure of the provision. The statute, 18 U.S.C. §3624, provides instruction to the Director of the Bureau of Prisons when an individual is approaching or has completed the incarceration portion of the sentence imposed by the sentencing court, including when and to whom release from incarceration is made. The Director is instructed to look to the sentencing judgment, and if a term of supervised release has been ordered, the Bureau of Prisons is to release the prisoner to the supervision of a probation officer. Supervised release begins at the time of release from incarceration, even when another term of probation or supervised release is also running. The statute provides that an individual cannot be released to supervision at the end of the custodial term if that individual is also serving a sentence of imprisonment for a separate offense, unless the term is less than 30 consecutive days.

The court of appeals has interpreted this provision incorrectly. The language of the statute states that "[a] term of supervised release does not run during any

period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." The Court of Appeals incorrectly interprets this language as suspending, or tolling the running of a supervised release term when a releasee has been held in pretrial detention for more than 30 days. This interpretation of §3624(e) lacks support in the plain language of the statute, as well as the statute's legislative history. The court of appeals erred in failing to require adherence to the clear directive in 18 U.S.C. §3583(i), which provides the district court with power to revoke supervised release after the release term has ended, but only so long as a timely warrant or summons has been issued.

A. Statutory Background

I. The manner and procedures for federal sentencing were upended through the provisions in the Sentencing Reform Act of 1984, Pub.L. 98-473, Tit. II, ch. II, 98 Stat. 1987, part of the omnibus Comprehensive Crime Control Act of 1984, Pub.L. 98-473, Tit. II, 98 Stat. 1976. The Sentencing Reform Act (SRA) reinvented sentencing, and along with the creation of the United States Sentencing Commission, represented a marked abandonment of most discretionary sentencing, restructured how courts impose sentence, and led to the eventual demise of the system of parole. Parole terms, which had been determined by the Bureau of Prisons during an inmate's term of imprisonment, were abandoned for the new concept of supervised

release, which shifted the prison sentence control dynamic from the Executive Branch to the Judiciary. S. Rep. No. 225, 98th Cong., 1st Sess. 1983, 1984 U.S.C.C.A.N. 3182.

A major part of the Sentencing Reform Act was the advent of supervised release. Supervised release essentially replaced the system of parole. It shifted authority for supervision from the Bureau of Prisons and the U.S. Parole Commission to the courts. See Pub.L. No. 98-473, Tit. II, §212(a)(2), 98 Stat. 1999. The Sentencing Reform Act provided that when a district court imposes a sentence for a misdemeanor or a felony, a term of supervised release may be imposed, to be served after imprisonment. 18 U.S.C. §3583(a). Many amendments to the supervised release statute have been promulgated. As the new sentencing rubric was implemented, gaps in the statute were filled to permit modifications and adjustments, and to clarify the scope of the court's power to regulate individuals while on supervision.

Title 18 U.S.C. §3624 explains that supervised release begins upon release from imprisonment, and that the supervised release term may run concurrently with any other term of supervised release, parole or probation that is running at the time of release. The statute also provides: "A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." Further, the subsection states that a prisoner has to be

informed that the prisoner must satisfy any fine and the consequences for failure to pay those amounts.

Partly in response to some confusion as to whether an additional term of supervised release could be imposed if the person had been previously revoked and imprisoned, the Violent Crime Control & Law Enforcement Act of 1994, Pub.L. No. 103-322, 108 Stat. 1796 contained amendments to 18 U.S.C. §3583 regarding revocation of supervised release after imprisonment. As a part of this clarification, the following subsection was added:

> "(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation."

18 U.S.C. §3583(i). See Pub.L. No. 103-322, Tit. XI, Subt. E, §110505, 108 Stat. 1796. The Sixth Circuit court erroneously reads this section in conjunction with that found at 18 U.S.C. §3624(e) to permit a "backward-looking analysis," finding that the district court had jurisdiction over petitioner, and that because no "temporal limitations" applied, to ignore the plain

language of the statute which requires the timely issuance of a warrant or summons. In their view, 18 U.S.C. §3624(e) had suspended, or tolled Mont's supervised release while he was detained in state custody pending resolution of state charges, and a warrant or summons could issue even after his period of supervision would otherwise have terminated.

B. Factual and Procedural Background

Jason J. Mont was initially convicted on December 8, 2005 for violations of 21 U.S.C. §§841(a)(1), (b)(1)(A), 846 and 18 U.S.C. §922(g)(1). He was sentenced to 120 months of imprisonment with an additional term of five years supervised release. His sentence having been reduced to 84 months upon the granting of a sentence reduction motion, Mr. Mont was released from the custody of the Bureau of Prisons on March 6, 2012. Thereafter, on March 7, 2012, Mr. Mont began his five-year supervised release term. ND-OH Rec.#77[1]. Because of the reductions from the original sentence imposed on December 8, 2005, Mr. Mont's sentence reduction resulted in his direct release from custody upon the granting of the sentence reduction motion. Mr. Mont had none of the transitional programming or community control as is typically offered while in the

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[1] "ND-OH Rec.#" refers to the record from the Northern District of Ohio, Eastern Division in Case No. 4:05-cr-229. The District Court's docket designations are contained in the Joint Appendix.

custody of the Bureau of Prisons serving the prison portion of the criminal judgment.

In March of 2015, Mr. Mont was indicted in Mahoning County, Ohio Common Pleas Court for Marijuana Trafficking, and was placed on bond after presentment in the Ohio court. Mr. Mont's probation officer became aware of the pending state drug charges, and when filing a January, 2016 violation report for failed drug tests and adulterated urine samples, included the pending charges in support of his request for a Warrant or Summons. ND-OH Rec.#89. At that time, Mr. Mont had served almost four years of his five-year supervisory term. Notwithstanding the probation officer's request and the pending charges, the district court determined that no warrant would issue. Instead, the district court directed only that she was to remain apprised of the status of the pending state law case. *Id.*

On May 26, 2016, a second state law indictment was issued against Mr. Mont, charging drug trafficking, and his bond in the 2015 marijuana trafficking case was revoked. Mont was given a bond for the new 2016 indictment, notwithstanding the increased severity of the later charges. Petitioner was arrested and incarcerated on the bond revocation from the 2015 case in Mahoning County Jail on June 1, 2016, and remained in state custody during all remaining relevant time periods. Throughout this process Mr. Mont's probation officer provided the district court with status updates, informing the court of the arrest, but did not request a warrant or summons. ND-OH Rec.#90.

By October of 2016, Jason Mont had entered pleas of guilty on both Mahoning County cases, agreeing to a six-year total sentence. After the entry of the plea, Mr. Mont filed an Admission of Violation of Supervised Release with the district court. He asked the district court to bring his violation forward, as he was aware that his pleas to the criminal offenses in state court amounted to a violation of the terms of supervised release. ND-OH Rec.#92. In response to the filing the district court entered a non-document order setting a violation hearing for November 9, 2016. No warrant or summons accompanied this scheduling order.

On November 2, 2016, counsel for the United States moved to continue the violation hearing, citing the fact that Mr. Mont had not yet been sentenced in state court. The United States recommended that the revocation hearing occur after sentencing in the Ohio court so as to avoid forum or "sentence shopping," apparently by Mr. Mont, as well as to avoid the "burden" of housing the defendant in federal custody. ND-OH Rec.#94. Objecting to the characterization of gamesmanship, counsel for Mr. Mont filed a response opposing a continuance, stressing resolution of his cases and including in the response a copy of Mr. Mont's binding six-year sentence in the Mahoning County plea agreement. ND-OH Rec.#95. In a non-document Order, the district court, citing its incorrect assumption that sentencing had been completed in state court, granted the Government's motion to continue the scheduled violation hearing. In December of 2016,

another non-document Order was issued, moving the violation hearing to January 26, 2017.

Subsequently, the Government filed another motion to continue the violation hearing, again alleging that Mr. Mont's actions in state court were for purposes of delay. The United States requested additional time until after the state law six-year sentence was imposed. ND-OH Rec.#96. Counsel for Petitioner filed in opposition to the continuance, again explaining that the delay with sentencing in Mont's state case had nothing to do with his federal supervised release. ND-OH Rec.#97. In a non-document Order, the district court settled the matter by ruling that no violation hearing would be held until Mr. Mont was formally sentenced in his state case, noting that the state conviction would be the basis of the supervised release violation. This Order was entered on January 20, 2017. None of the preceding motions or orders indicated that Mr. Mont's supervised release term was in any way tolled or suspended. Furthermore, no violation report, warrant, or summons was issued or served on either Mr. Mont or his counsel during any of the pleadings.

Mr. Mont's supervised release term expired on March 6, 2017, five years after his release from custody on March 6, 2012. Mr. Mont was subsequently sentenced in Mahoning County court on March 21, 2017. The Judgment was entered on the two cases on March 23, 2017. Mr. Mont received the aforementioned six-year sentence of imprisonment, apportioned to the counts and cases thereto. He received 305 days credit for time served in pretrial detention on the 2015

indictment, and 300 days credit for time spent in pretrial detention for the 2016 indictment.

A Violation Report and Warrant request was then filed on March 30, 2017, establishing that Petitioner had been sentenced in state court. The district court agreed, and a warrant was issued on March 30, 2017, 24 days after the expiration of the supervised release term. ND-OH Rec.#100. However, the delay continued again until counsel for Mr. Mont filed a Notice of Availability with the district court, seeking to have a definitive end to his federal case prior to designation to a state prison facility. ND-OH Rec.#102. In response, the district court ordered a violation hearing for June 28, 2017.

Prior to the June 2017 hearing, counsel for Mr. Mont filed a Memorandum in Aid of Proceedings, where he asserted that Mont's supervised release term had expired on March 6, 2017, and questioned the district court's jurisdiction to entertain a violation. ND-OH Rec.#107. At the June 28, 2017 hearing the district court addressed the jurisdictional issue. Counsel for the government averred that *United States v. Madden*, 515 F.3d 601 (6th Cir.2008) was dispositive, and that it calls for tolling when there are several interactions between the defendant, the court, and counsel for the government. J.A. 20. For their part, the probation officer argued that his Office considers anyone held in pretrial detention as being "unavailable" for supervision, thus "tolling" the period of supervised release. J.A. 21-22.

The district court's first finding on the question of jurisdiction turned out to be incorrect—that she had given notice by way of summons on November 1, 2016, when in fact no summons issued. Based upon that incorrect finding, the district court settled on authority granted her under 18 U.S.C. §3583(i), and determined the time at issue to be that which was reasonably necessary to adjudicate the violations. The district court noted that "the plain language of 3583(i), and that section states that a Court retains the power to impose a sanction for a supervised release violation beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising from its expiration." J.A. 23. The district court found that there was jurisdiction because the period between Mont's state law plea on October 7, 2016 and the June 28, 2017 hearing was a reasonable delay caused by Mont. J.A. 24. But in doing so, the district court " . . . left off a key conditional phrase . . . ", perhaps due to the mistaken belief that a summons had been issued—that the timeframe in question is only expanded "if, before [that term's] expiration, a warrant or summons has been issued. . . ." *United States v. Mont*, 723 Fed. Appx. 325, 327 at n.4 (6th Cir.2018). J.A. 24. The district court then sentenced Mr. Mont to 42 months of incarceration on the violations, to run consecutive to the six-year state law sentence. ND-OH Rec.#109.

C. Sixth Circuit Affirmed

The Sixth Circuit Court of Appeals affirmed the district court's jurisdiction to sentence Mr. Mont based upon the law violations, albeit on grounds different from those cited by the district court. J.A. 33-46. In doing so the court followed its earlier decision in *United States v. Goins*, 516 F.3d 416 (6th Cir.2008). Notwithstanding the fact that Mr. Mont's supervised release term had expired while he remained in pretrial detention under the authority of the state of Ohio, the Circuit Court cited to provisions in 18 U.S.C. §3624(e) as "tolling" the running of a supervised release term, and settling the jurisdictional issue.

The *Mont* panel described its application of 18 U.S.C. §3624(e) as an "interpretive riddle." "[D]oes thirty days or more of pretrial detention for a charge that results in (and is credited to) a conviction count as 'imprisonment in connection with' that conviction?" J.A. 40. While acknowledging a circuit split, the Sixth Circuit solved their riddle by using 18 U.S.C. §3624(e) as a rearview mirror, endorsing and employing a "backward-looking analysis" and explaining that "[1] when a defendant is held for thirty days or longer in pretrial detention, and [2] he is later convicted for the offense for which he was held, and [3] his pretrial detention is credited as time served toward his sentence, then the pretrial detention is 'in connection with' a conviction and tolls the period of supervised release under §3624." J.A. 39-40, citing *Goins*, 516 F.3d at 417.

However even though they acknowledge a conflict among the circuits, the *Mont* panel did not address in substance Petitioner's argument concerning the conflicting language found in the opinions of other circuits, interpreting 18 U.S.C. §3624(e) differently—in a manner that precludes the rearview mirror, backward-looking concept. Rather than forthrightly addressing contrary analysis, like that found in the D.C. Circuit's decision in *United States v. Marsh*, 829 F.3d 705 (D.C. Cir.2016) (holding that pretrial detention does not apply to the language in §3624(e)), the *Mont* panel instead found that they were bound by their prior opinion in *Goins*. J.A. 44-45.

SUMMARY OF THE ARGUMENT

The decision of the Sixth Circuit is wrong in two major aspects. The first error was the determination that 18 U.S.C. §3624(e) tolled the running of Petitioner's supervised release term while Petitioner was held in pretrial detention for separate state law charges. This error reinforced a flawed interpretation of §3624(e), perpetuated by its earlier decision in *United States v. Goins*, 516 F.3d 416 (6th Cir.2008), and adopted by the appellate courts which have followed *Goins'* faulty interpretation.[2] Neither the structure,

[2] Cases which hold pretrial detention satisfies imprisonment in connection with a conviction: *United States v. Ide*, 624 F.3d 666, 667 (4th Cir.2010); *United States v. Molina-Gazca*, 571 F.3d 470, 471 (5th Cir.2009); *United States v. Johnson*, 581 F.3d 1310 (11th Cir.2009).

history or language of the statute support the appeals court's interpretation of the provision of §3624(e) in the manner used to extend the period of supervised release past the original term imposed at the time of sentencing. This Court's decision in *United States v. Johnson*, 529 U.S. 53 (2000) supports the fact that the plain language of 18 U.S.C. §3624(e) does not permit the backward-looking analysis used by the court of appeals which equate pretrial detention periods to a conviction, so long as the detention is later credited against a term of imprisonment.

The second error committed by the appeals court was the misapplication of 18 U.S.C. §3583(i), and its decision to disregard the failure to issue a warrant or summons prior to the expiration of Petitioner's supervised release term defeated the district court's authority to revoke supervised release. No warrant or summons was issued during Petitioner's pretrial confinement through the expiration of the five-year term of supervised release. The appeals court eschewed the necessity of preserving the sentencing court's power to revoke supervised release after the expiration of the term, disregarding the clear statutory language of §3583(i), which requires a pre-expiration assertion of jurisdiction in order to revoke or extend a term of supervised release.

The court of appeals created a strained and unworkable interpretation of 18 U.S.C. §3624(e) and ignored the unambiguous language of 18 U.S.C. §3583(i) through its ruling, based largely on that court's own precedent which itself contorted §3624(e) so as to not

reward a serial supervised release violator and absconder. The result in Petitioner's case was particularly problematic, given the many attempts made by Petitioner to resolve his supervised release issues while the five-year term was running.

ARGUMENT

I. THE APPEALS COURT'S DETERMINATION THAT PETITIONER'S PRETRIAL DETENTION IN STATE COURT TOLLED THE SUPERVISED RELEASE TERM BY ANALOGIZING PRETRIAL CONFINEMENT WITH IMPRISONMENT IN CONNECTION WITH A CONVICTION, PRIOR TO ANY CONVICTION, IS NOT SUPPORTED BY THE LANGUAGE OR HISTORY OF 18 U.S.C. §3624(e)

The plain language of §3624(e), which suspends the running of a supervised release term when the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime, represents an unmistakable use of the present tense, and an unambiguous requirement that tolling occur only during the service of a term of imprisonment for a crime. Not only is Congress's use of the present tense unambiguous, so is the statute's requirement that the imprisonment imposed on a defendant result from a criminal conviction: pretrial detention is, by definition, prior to the adjudication of guilt and imposition of punishment. See, e.g., *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing

statutes"). In addition, the statutory text of §3624(e) and the legislative purpose of supervised release all point in the same direction: notwithstanding any later grant of credit for time served, §3624(e) does not apply to pretrial detention.

A. For Tolling of Supervised Release under §3624(e), a Defendant must be Imprisoned on a Criminal Conviction Contemporaneous to Tolling

"The starting point in interpreting a statute is its language, for if the intent of Congress is clear, that is the end of the matter." *Good Samaritan Hospital v. Shalala*, 508 U.S. 402, 409 (1993). Answering an "interpretive riddle" is sometimes as simple as looking to the plain language of the statute. After all, "the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover." *King v. Burwell*, ___ U.S. ___, 135 S.Ct. 2480, 2497 (2015) (Scalia, J., dissenting) (citing *Lynch v. Alworth-Stephens Co.*, 267 U.S. 364, 370 (1925)).

Beginning with the plain language of the statute at issue, it is clear that Congress chose to use the present tense in setting forth when supervised release is suspended: "A term of Supervised release does not run during any period in which the person *is imprisoned in connection with a conviction* for a Federal, State, or local crime. . . ." 18 U.S.C. §3624(e) (emphasis added). The plain, logical reading of the language indicates two

dispositive points: that the statute uses the present tense, which provides the temporal basis for when "imprisonment" occurs; the second point is that "imprisonment" is for a crime for which a person has been adjudicated, sentenced and confined. Pretrial detention which is credited toward the service of a term of incarceration fails to satisfy the temporal parameters of the statute. Neither is pretrial detention "imprisonment" as the term is used in §3624(e).

1. This Court has consistently held that statutes written with present-tense verbs, such as in §3624(e), do not apply to past acts. See, e.g., *Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003) ("We think the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed."). And use of the present tense throughout subsection 3624(e) signifies Congress's intention to establish the temporal ambit of the statute. One "cardinal rule" of statutory interpretation is that "[s]tatutory language must be read in context [since] a phrase 'gathers meaning from the words around it.'" *General Dynamics Land Sys. v. Cline*, 540 U.S. 581, 596 (2004) (citing *Jones v. United States*, 527 U.S. 373, 389 (1999)). Put another way, the plain meaning of key words in the statute is informed by the surrounding words.

Here the words throughout the subsection are present tense. Petitioner submits that the pervasive use of the present tense throughout the subsection is a manifestation of Congressional intent to ground the statute in the present in anticipation of a prisoner's

release after incarceration: "[t]he term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any . . . term of probation, supervised release, or parole for another offense to which a person is subject, or becomes subject during the term of supervised release." 8 U.S.C. §3624(e).

Use of the present tense throughout the statute indicates the clear, unambiguous intent on the part of Congress that the phrase "is imprisoned in connection with a conviction for a Federal, State, or local crime" requires a conviction and incarceration, not pretrial detention prior to adjudication of guilt or sentencing. See, e.g., *Carr v. United States*, 560 U.S. 438 (2010) (where the Court determined that the SORNA travel requirement's use of the present tense ("travels") rather than in the past or present perfect ("traveled" or "has traveled") reinforces the conclusion that pre-enactment travel falls outside the statute's compass). *Id.* at 447-448 ("Congress could have phrased its requirement in language that looked to the past . . . , but it did not choose this readily available option" (citing *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found.*, 484 U.S. 49, 57 (1987)).

2. Section 3624(e) was reviewed in *United States v. Johnson*, 529 U.S. 53 (2000), where the issue related to whether supervised release could be credited to imprisonment which lasted beyond the legally authorized term. In resolving the issue, the Court determined that the statute "suggested a strict temporal interpretation, not some fictitious or constructive earlier time," and

that "[i]ndeed, the third sentence admonishes that 'supervised release does not run during any period in which the person is imprisoned.'" *Johnson*, 529 U.S. at 57. Indeed, the Sixth Circuit addressed the strict temporal analysis in *United States v. Goins*, but eschewed this Court's direction, deciding instead to find that the temporal discussion in Johnson was isolated to the subsection's release from imprisonment language.[3]

The District of Columbia Circuit Court of Appeals, in disagreement with the Sixth Circuit's interpretation of §3624(e), presented the appropriate analysis. In

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[3] Notwithstanding the Sixth Circuit's recognition of the temporal analysis, the appeals court chose not to apply it to the full subsection, leaving out the verb "is" in its application of the statute:

> To understand why "imprisoned in connection with a conviction" appears to lack any temporal limitation, it is instructive to consider Goins's claim that tolling for pretrial detention would violate the Supreme Court's "strict temporal" approach in *Johnson*. We reject Goins's temporal argument because Goins ignores what created the "strict temporal interpretation" for the Supreme Court: the specific language of the statute. The Supreme Court in *Johnson* found itself bound to a "strict temporal interpretation" because the statute itself used the phrase "on the day the person is released," a phrase that limited the court to a certain temporal perspective. §3624(e); *Johnson*, 529 U.S. at 57, 120 S.Ct. 1114. In stark contrast, the very next sentence in §3624(e), "imprisoned in connection with a conviction," does not make reference to any temporal perspective. Thus, despite its backward-looking approach, a pretrial detention that leads to a conviction, and is later credited as time served, is "in connection with a conviction."

United States v. Goins, 516 F.3d 416, 423 (6th Cir.2008).

United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016), that court provided cogent, simple, and easily applicable reasoning based on the plain reading of the language to find that pretrial detention does not toll the running of supervised release:

> Critically, the statute provides that "[a] term of supervised release does not run during any period in which the person *is* imprisoned in connection with a conviction for a Federal, State, or local crime. . . ." 18 U.S.C. §3624(e) (emphasis added). By phrasing the statute in the present tense, Congress has foreclosed the type of backward-looking tolling analysis that the Fourth, Fifth, Sixth, and Eleventh Circuits allow. When a person is held in pretrial detention, one cannot say that the person "is imprisoned in connection with a conviction for a Federal, State, or local crime" for an obvious reason: he has yet to be convicted. To be sure, if the person is later convicted and receives credit for time served, it might be appropriate to say that the person was imprisoned or has been imprisoned "in connection with a conviction." But Congress did not phrase the statute in the past or present perfect tense; it framed it in the present.

Marsh, 829 F.3d at 709. See 1 U.S.C. §1: "In determining the meaning of any Act of Congress, unless the context indicates otherwise—words used in the present tense include the future as well as the present;" *Carr*, 560 U.S. at 448: "By implication, then, the Dictionary Act instructs that the present tense generally does not include the past."

The use of the present tense throughout §3624(e) clarifies that being held in pretrial detention cannot be an equal to "is imprisoned in connection with a conviction" for a crime. Any other reading ignores the plain meaning of the statute, and Congressional intent. Had Congress intended it otherwise, they would have drafted it so. For example, if Congress had intended the analysis to be framed as the Sixth Circuit suggests, they could have drafted the statute in the present perfect tense. A statute so drafted might read "[a] term of supervised release does not run during any period in which the person ***will have been*** imprisoned in connection with a conviction for a Federal, State, or local crime. . . ."; had they intended a past tense analysis, the statute might read "[a] term of supervised release does not run during any period in which the person ***has been*** imprisoned in connection with a conviction for a Federal, State, or local crime. . . ." Instead, Congress made a clear, unambiguous choice to remain in the present tense. This Court should answer the "interpretive riddle" consistent with the D.C. Circuit and the plain language of the statute, not through some "curious, narrow, or hidden" analysis.

B. The Sixth Circuit's Tortured Reasoning in Applying §3624(e) is Unsupported by the Rules of Statutory Interpretation

The courts of appeals which have held pretrial detention tolls the running of supervised release have based their reasoning on the statute's phrase "imprisonment in connection with a conviction," and have in

large part ignored the temporal reach of the statute as discussed herein. Each of these appeals courts have recklessly decided to square the language of the statute with the facts of their case in order to salvage a revocation imposed after the expiration of a defendant's supervised release term. Such post hoc, "backwards-looking" reasoning has led to interpretations of §3624(e) that were never part of the statute's purpose, including its temporal interpretation as revealed in *Johnson*. The lower courts have also failed to follow proper statutory analysis which give effect to all of the statute's provisions, "so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009).

1. The awkwardness of the court of appeals' analysis lays bare its fault. As the Sixth Circuit provided in *Mont*, the "interpretive riddle" relies upon looking back to determine whether a defendant's pretrial detention in Federal, State, or local court resulted in a conviction; whether there was a sentence imposed greater than 30 consecutive days; and whether the pretrial detention was later credited to the term of imprisonment after the conviction and sentence. J.A. 40-43. A plain reading of the statute finds the "interpretive riddle" an unnecessary construct.

Pretrial detention is not imprisonment caused by a criminal conviction, a fact of which Congress was well aware at the time 18 U.S.C. §3624 was enacted.[4]

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[4] Pretrial detention has historically been to ensure attendance, not to punish for some future conviction:

Along with the passage of the Sentencing Reform Act, the omnibus Crime Control Act of 1984 also included passage of the Bail Reform Act. In the Bail Reform Act, the purpose for detention proves to be very different than the purpose for imprisoning a person convicted of a crime—the purpose of detaining an individual prior to adjudication of guilt was to assure the individual's presence for court proceedings, and to protect the public, whereas the purpose for imprisonment after conviction was to punish and, to a lesser degree, rehabilitate. See S. Rep. 98-225, 98th Cong., 1st Sess. 1983, 3192, 3193. It is a "cardinal principle" of interpretation that courts "must give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (citing *United States v. Menasche*, 348 U.S. 528, 538-539 (1955)). Similarly,

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> "But, notwithstanding [the] general presumption of innocence, the successful prosecution and punishment of crimes require that the necessary precautions be taken to secure the presence of the accused during the trial and afterwards, in case of conviction, and the fear of a default in attendance becomes greater in proportion as the likelihood of conviction increases."
>
> Another phase of preliminary confinement, which is permitted in the furtherance of justice, is the commitment of witnesses in criminal cases. . . .
>
> "Since the preliminary confinement is ordered only to insure the attendance of the accused at the trial, the confinement can only be continued as long as there is any reasonable danger of his default."

Christopher G. Tiedeman, *A Treatise on State and Federal Control of Persons and Property in the United States considered from both a Civil and Criminal Standpoint*, §32 (St. Louis: The F.H. Thomas Law Book Co., 1900) Vol. 1.

when "Congress includes particular language in one section of a statute but omits it in another . . . this Court 'presume[s]' that Congress intended a difference in meaning." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Had Congress intended to equate pretrial detention with imprisonment for a criminal conviction in 18 U.S.C. §3624(e), enacted as part of the Sentencing Reform Act, simultaneously with the Bail Reform Act, it certainly would have found no better moment than within the omnibus Comprehensive Crime Control Act.[5]

2. Respondent references alternative definitions of "imprison" in Webster's Third New International Dictionary, which defines "imprison" as "to put in prison: confine in a jail" or to "limit, restrain, or confine as if by imprisoning"; in the Prison Litigation Reform Act, 18 U.S.C. §3626(g)(5);[6] and in the oft-reference general arrest statute, 18 U.S.C. §3041; as proof that pretrial detention and imprisonment are synonymous. Resp. Opp. Cert. at 10. Many of the appeals courts following the Sixth Circuit's decision in *Goins* have also referred to these sources as justification for applying pretrial detention to imprisonment in connection with

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[5] *King v. Burwell*, ___ U.S. ___, 135 S.Ct. 2480, 2495 (2015) ("[C]ontext and structure of the Act compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase.")

[6] The Prison Litigation Reform Act has its own definitional section to be used in actions under the PLRA. See 18 U.S.C. §3626(g).

a conviction for a crime.[7] However, using these varied definitions to resolve a statutory interpretation issue fails to follow the well-settled rules of statutory construction: "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal v. United States*, 508 U.S. 129, 132 (1993).

The language of the statute cannot be parsed to satisfy an interpretation which bears no logic with the purpose of the provision. Stopping, or pausing a term of supervised release when a defendant is imprisoned based upon a conviction and judgment makes practical sense from the standpoint that the purpose of supervised release is to provide assistance to a defendant released from prison in his or her integration back into society and for rehabilitation. District courts are provided continuing supervisory authority to monitor the progress of a supervised releasee and to adjust the terms of supervision as needs arise. S. Rep. No. 225, 98th Cong. 1st Sess. 124 (1983). Indeed, contrary to assertions made by Petitioner's probation officer that pretrial detention makes an individual "unavailable" for supervision, the ability to monitor during pretrial detention was evidenced in Petitioner's case. Petitioner's probation officer was able to both visit Mont while detained, and provide updates to the district

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[7] In *United States v. Ide*, 624 F.3d 666, 670 (4th Cir.2010), the appeals court followed the reasoning in *Goins*, citing the "imprisoned" contextual comparison from 18 U.S.C. §3041's use of the phrase "arrested and imprisoned or released . . . for trial."

court, while Petitioner was held in the local county jail. ND-OH Rec.#90.

The language of §3624(e) requires a conviction and the service of a sentence on that conviction in order to suspend or toll the running of supervised release. That the term "imprison" has, in isolation, different meanings is not permission to impose these alternative meanings to a statute which is capable and clear on its own. Even accepting Respondent's argument as true, the fact that there are alternative meanings to the word is of no consequence to this case or to this Court: "We have several times affirmed that identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute." *Yates v. United States*, ___ U.S. ___, 135 S.Ct. 1074, 1082 (2015) (internal citations omitted). This Court can therefore find for the Petitioner on the definitional issue, and yet avoid further definitional conflict regarding the meaning of the word "imprisonment."

3. The phrase "in connection with" provided the "interpretive onramp" for the Sixth Circuit in *United States v. Goins* to find that pretrial detention, later credited to a criminal conviction and sentence, was "in connection with a conviction" for purposes of tolling Mont's supervised release. However, the statute's reference to imprisonment in connection to a conviction for a crime, and a plain language understanding of it, would direct the reader to imprisonment for violation of parole or supervised release. A revocation of supervised release which includes a

term of re-imprisonment is not a new offense—the re-imprisonment is *in connection with* the prior Federal offense. See, e.g., *Johnson v. United States*, 529 U.S. 694, 700 (2000) (Sanctions for violating supervised release, including re-imprisonment, relate back to the original offense, avoiding double jeopardy concerns). This interpretation does not require imposing a backward-looking analysis employed by the lower court, while respecting the plain meaning and intent of Congress.

Any other reading of "in connection with" that calls for inclusion of a pretrial detention term requires significant inquiry into the bond and bail practices of whatever jurisdiction is holding the defendant, the specific charges levied against the defendant, and if there is a conviction, whether the sentence that flows from the conviction is the same charge which caused the pretrial detention in the first instance. The contingencies involved in making such a determination is an affront to the strict temporal interpretation of the statute, and is largely unworkable. Federal terms of imprisonment are calculated in accordance with 18 U.S.C. §3585, and the sentence commences when the individual arrives at the designated location for service of the sentence. *Id.* at §3585(a). The statute describes this location as "official detention facility." Section 3585(b) sets forth the procedure to obtain credit for time served, and allows credit to be given to any time spent in official detention not credited to another sentence. These procedures do not account for the myriad procedures in the separate sovereign courts where a

supervised releasee may be detained, making any application of pretrial detention in the separate sovereigns a minefield that the statute does not require a court to navigate.

II. TO PRESERVE THE ABILITY TO REVOKE SUPERVISED RELEASE AFTER EXPIRATION OF THE TERM IMPOSED, A DISTRICT COURT IS REQUIRED TO FILE A WARRANT OR SUMMONS IN ACCORDANCE WITH 18 U.S.C. §3583(i)

Assured that the tolling analysis would offer sufficient time to revoke Petitioner's supervised release, the Sixth Circuit determined that the district court's inadvertence in failing to file a summons or warrant prior to the expiration of Petitioner's supervised release term was of no moment. The appeals court simply added the 10 months of pretrial detention to Mont's term of supervised release, and the issue was no longer significant to the circuit court's analysis. But 18 U.S.C. §3583(i) shows that the Sixth Circuit's solution to their "interpretive riddle," and their backward-looking tolling structure, to be unnecessarily complex—18 U.S.C. §3583(i) provided the district court with the authority to hold the June, 2016 violation hearing, notwithstanding the expiration of the supervision term on March 7, 2016. The district court simply had to issue a timely summons or warrant.

Section 3583(i) is a necessary prerequisite for a district court to follow in order to preserve its authority

when there is a clear possibility that a defendant's term of supervised release may expire prior to the opportunity to hold a revocation hearing. The appeals court's treatment of the provision may reflect the fact that the Court has yet to issue any opinion addressing the jurisdiction, or power of the court to make changes to an expired term under §3583(i). Petitioner suggests that §3583(i) was intended to extend jurisdiction over an expired supervised release term, and as a jurisdictional issue, provides the opportunity herein to raise the issue notwithstanding the Sixth Circuit's decision.

A. 18 U.S.C. §3583(i) Provides Subject-Matter Jurisdiction over Expired Supervised Release Terms

1. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). While district courts have original jurisdiction over offenses against the laws of the United States, 18 U.S.C. §3231, courts faced with expiring supervised release terms and violation conduct, were often challenged based upon their authority to revoke or amend supervised release after the term had expired, even when notice of the violation was given prior to the term's expiration.[8] Congress

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[8] See *United States v. Neville*, 985 F.2d 982 (9th Cir.1993), where a show cause order was issued prior to the expiration of the term of supervised release, but the hearing on the matter extended beyond the expiration. The *Neville* Court upheld the

recognized the lapse of authority in the supervised release statute, and in 1994, 18 U.S.C. §3583 was amended to include the current version of §3583(i).[9] See Violent Crime Control and Law Enforcement Act of 1994, Pub.L. No. 103-322, §110505, 108 Stat. 1796, 2017.

2. This Court has issued recent, clear, guidance which assists in deciding whether or not 18 U.S.C. §3583(i) is jurisdictional. See *Gonzalez v. Thaler*, 565

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revocation, based upon implicit authority to revoke within a reasonable time, in reliance on the language in the probation statute relative to delayed revocations. 18 U.S.C. §3565(c).

[9] An Explanation of Provisions was made part of the Congressional Record, and provided the reasons why §3583(i) was needed:

> Under existing 18 U.S.C. §3565(c), a court has authority to revoke probation after the term of probation has expired in the limited circumstances where a warrant or summons alleging a violation was filed prior to the end of the probation term. In such a case, the court has continued jurisdiction to revoke and resentence for a "reasonably necessary" period beyond the expiration of the probation term.
>
> In contrast, existing statutory law is silent in respect to court authority to adjudicate alleged violations of supervised release and, if warranted, revoke supervised release after a term of supervised release has expired. The proposed legislation fills the gap in the current law by providing continued court jurisdiction to adjudicate alleged supervised release violations and revoke supervised release if a warrant or summons was timely filed before the end of the supervised release term. The proposed language parallels the existing statutory provision for delayed probation revocation.

137 Cong. Rec. S7769-01 (1991).

U.S. 134 (2012). In Petitioner's case, the Sixth Circuit relied upon its prior decision relative to §3624(e) in *Goins*, and therefore identified 18 U.S.C. §3583(i) as being irrelevant to the issue. J.A. 42, 43. But "[w]hen a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. See *United States v. Cotton*, 535 U.S. 625, 630 (2002). Subject-matter jurisdiction can never be waived or forfeited." *Thaler*, 565 U.S. at 141. Therefore, Petitioner submits that the jurisdiction determination is ripe for review.

In *Thaler*, clear rules were set forth to determine whether a statute was jurisdictional: "We accordingly have applied the following principle: A rule is jurisdictional '[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional.'" But if "Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as non-jurisdictional." *Thaler*, 565 U.S. at 141 (internal citations omitted). Put another way, the "clear intent" of the legislature may be discerned through a review of the statutory language; the context; and the purpose of the time limitation. *Dolan v. United States*, 560 U.S. 605 (2010) (noting that "[i]n answering this kind of question, this Court has looked to statutory language, to the relevant context, and to what they reveal about the purposes" of the statute.)

The language of §3583(i) suggests that the statute is jurisdictional. The use of words such as "extends"

and "power of the court" suggest that the statute was meant to grant authority to the district court. See, e.g., *Landgraf v. U.S. Film Prods.*, 511 U.S. 244, 274 (1994). More than a claims-processing rule, §3583(i) deliberately sets forth the mechanism to extend the reach of the district court beyond an original judgment, by providing the means to preserve jurisdiction for supervised release terms which are subject to revocation, and close in time to completion.

The legislative history provides a clear statement as to the purpose for making such changes to the supervised release statute. The concerns of the Senate Judiciary Committee were evidenced in the Explanation of Provisions, which speaks of the amendment providing "continued court jurisdiction" to amend or revoke supervised release, so long as a warrant or summons is filed. 137 Cong. Rec. S7769 (1991). Indeed, the provision mirrors that in the probation statute, and referred to the same as providing courts with jurisdiction to amend probation terms that had expired, so long as a warrant or summons had been filed. See 18 U.S.C. §3565(c).

B. The Sixth Circuit Erred by Failing to Address the District Court's Failure to Invoke its Jurisdiction under §3583(i): the District Court was Without Jurisdiction to Impose any Sentence on Petitioner's Expired Term of Supervised Release

1. If 18 U.S.C. §3583(i) is found to be jurisdictional, Petitioner submits that the court of appeals committed error in dismissing the challenge to the lack of a warrant or summons filed in the case, and reversal is required. According to the Respondent the record is unclear as to whether the district court filed a summons in Petitioner's case. There was indeed some discussion at the supervised release revocation hearing where the district court suggested that a summons had been issued. Resp. Opp. Cert. at 17. However the district court's apparent confusion on the issue, the record is clear—there was no summons or warrant issued by the district court in Petitioner's case. Indeed, the district court would likely have not issued a summons to Mont, who was housed in Mahoning County Jail. It is not a general practice to use a summons to signal a pending court appearance when a person is in custody. Therefore, there is no record of a summons or warrant, until March 30, 2017, 23 days past the expiration of Jason Mont's supervised release term.

2. The district court had at least three opportunities to issue a warrant based upon Petitioner's several violations of the terms and conditions of supervised release. That the district court decided to wait until Petitioner was sentenced in state court was

not a bar to the filing of a warrant prior to the expiration of the term of supervised release. Indeed, the term of release was presented on each violation report filed by the probation officer, which set forth the date Petitioner was released from imprisonment, March 6, 2012, and that the term imposed in 2005 at the time of sentencing was a five-year term. ND-OH Rec.##89, 90, 100. Had a warrant been filed in November of 2016, the warrant would have acted as a detainer, which in effect would have been to provide notice to the state actors and to Petitioner that a supervised release violation hearing was forthcoming after resolution of the state criminal case. The warrant would have also satisfied the jurisdictional prerequisites under 18 U.S.C. §3583(i).

The district court chose not to preserve its power over Mont until that ability was extinguished through termination of the supervisory term. The Sixth Circuit's decision to use tolling under §3624(e) by authority of its prior, flawed precedent to preserve the district court's jurisdiction to revoke Mont's term of supervision was error.

CONCLUSION

For the foregoing reasons, the Sixth Circuit Court of Appeals opinion should be reversed.

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In the Supreme Court of the United States

JASON J. MONT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether petitioner was "imprisoned in connection with a conviction for a Federal, State, or local crime," 18 U.S.C. 3624(e), for purposes of tolling his federal supervised release, during the approximately ten-month period of state incarceration between his arrest and sentencing for state crimes, where that period was credited toward the term of imprisonment in his state sentence.

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JASON J. MONT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The decision of the court of appeals (J.A. 33-46) is not published in the Federal Reporter but is reprinted at 723 Fed. Appx. 325. The order of the district court (J.A. 14-15) is not published in the Federal Supplement but is available at 2017 WL 10541435.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2018. The petition for a writ of certiorari was filed on May 15, 2018, and granted on November 2, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 3624(e) of Title 18 of the United States Code provides in pertinent part:

> [A] term of supervised release commences on the day the person is released from imprisonment and runs

> concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.

18 U.S.C. 3624(e).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Ohio, petitioner was convicted of conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2000 & Supp. V 2005), and 21 U.S.C. 846; and possession of firearms and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The district court sentenced him to 120 months of imprisonment, which was later lowered to 84 months, to be followed by five years of supervised release. Judgment 2-3; D. Ct. Doc. 65, at 1 (Aug. 24, 2009); D. Ct. Doc. 77, at 5-6 (Mar. 5, 2012). The district court subsequently determined that petitioner had violated conditions of his supervised release and ordered 42 months of imprisonment. J.A. 14. The court of appeals affirmed. J.A. 33-46.

A. Petitioner's Offense Conduct And Sentence

In 2004, petitioner began conspiring with William Black to possess and distribute cocaine and crack cocaine. Presentence Investigation Report (PSR) ¶¶ 11-18. Over the course of four drug transactions between January and March 2005, petitioner and Black sold 11.8 grams

of cocaine and 280.3 grams of crack cocaine to a confidential source for the Drug Enforcement Administration. PSR ¶¶ 12-17. In April 2005, agents searched petitioner's home pursuant to a warrant and found two loaded handguns and $2700 in cash. PSR ¶ 18.

A federal grand jury charged petitioner with eight drug and firearm offenses, Indictment 1-5, and petitioner later pleaded guilty to one count of conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2000 & Supp. V 2005), and 21 U.S.C. 846; and one count of possession of firearms and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1; see 9/7/05 Minute Order. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court subsequently granted petitioner two sentence reductions pursuant to 18 U.S.C. 3582(c)(2), which together shortened the term of imprisonment in his sentence to 84 months (but did not shorten his term of supervised release). D. Ct. Doc. 65, at 1; D. Ct. Doc. 77, at 5-6.

B. Petitioner's Post-Release Supervision And Conduct

Petitioner was released from federal prison on March 6, 2012. J.A. 34. Upon his release from prison, petitioner began serving his five-year term of supervised release. *Ibid.*

1. Established by Congress in the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, supervised release is the principal "form of post-confinement monitoring" for defendants who are convicted of federal crimes. *Cornell Johnson* v. *United States*, 529 U.S. 694, 697 (2000). "The congressional policy in providing for a term of supervised release after

incarceration is to improve the odds of a successful transition from the prison to liberty." *Id.* at 708-709. Like parole, supervised release provides defendants with a form of conditional liberty by allowing them to provisionally serve "part of the[ir] sentence" out of prison, subject to revocation and reimprisonment if they violate the conditions of their release. 18 U.S.C. 3583(a) and (e)(3); see *Cornell Johnson*, 529 U.S. at 711.

The conditions of petitioner's supervised release included requirements that petitioner "not commit another federal, state, or local crime," "not illegally possess a controlled substance," "refrain from any unlawful use of a controlled substance," and "submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court." Judgment 3. The court also ordered petitioner to take certain actions during the term of supervised release, including "report[ing] to the probation officer," "support[ing] his * * * depend[e]nts and meet[ing] other family responsibilities," and "work[ing] regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons." *Ibid.*

2. Under 18 U.S.C. 3624(e), a "term of supervised release commences on the day the person is released from imprisonment." Accordingly, based solely upon the date of his release from imprisonment, petitioner's term of supervised release was "slated to end on March 6, 2017." J.A. 34. Section 3624(e) further provides, however, that "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. 3624(e). Prior to

March 6, 2017, petitioner committed state crimes and spent time in state jail. J.A. 35-36.

Petitioner's supervised release began in March 2012, when he was released from federal prison to the supervision of a federal probation officer, who was required to monitor petitioner in accordance with the conditions of supervised release and to report petitioner's conduct to the district court. J.A. 34; 18 U.S.C. 3603(1)-(3), 3624(e). During the first few months of his supervised release, petitioner underwent a substance-abuse assessment and successfully completed outpatient treatment. D. Ct. Doc. 90 (June 2016 Report), at 2 (June 13, 2016). But by 2015, petitioner had begun trafficking marijuana. J.A. 35. In March 2015, an Ohio state grand jury "secretly indicted" him on two marijuana-trafficking counts. *Ibid.* (citation omitted); June 2016 Report 1. In May 2015, petitioner was arrested on those charges and released on bond while awaiting trial. 15-cr-291 Docket entry (Ohio Mahoning Cnty. Ct. of Common Pleas May 5, 2015). Petitioner's federal probation officer continued to supervise petitioner while those state charges were pending. D. Ct. Doc. 89 (January 2016 Report), at 2 (Jan. 29, 2016).

Petitioner then began to show signs of renewed substance abuse, which eventually led his probation officer to report violations of his supervised-release conditions to the district court. January 2016 Report 1-2. After petitioner tested positive for cocaine and Oxycodone in October 2015, the probation officer referred him for another substance-abuse assessment and more individual counseling. *Id.* at 2. But in random drug tests between November 2015 and early January 2016, petitioner tested positive five times for controlled substances for which he lacked a prescription (Oxycodone and Oxymorphone). *Id.* at 1-2; J.A. 35. Petitioner also attempted to

pass two subsequent drug tests in January 2016 by filling the drug-testing cups with an "unknown" liquid from a bottle. *Ibid.*

The probation officer submitted the violation report to the district court in January 2016, informing the court of petitioner's pending state charges and alleging that petitioner had violated conditions of his supervised release by failing and tampering with his drug tests. J.A. 34-35; January 2016 Report 1-2. As the court "having supervision of" petitioner, the district court had authority to issue a warrant for petitioner's arrest for violation of a condition of release. 18 U.S.C. 3606. Although the court declined at that time to issue a warrant on the alleged supervised-release violations, it asked to "be notified of the resolution of the state charges." J.A. 35 (quoting January 2016 Report 4).

From approximately mid-2015 to mid-2016, petitioner was unemployed. June 2016 Report 2. His probation officer counseled him several times about job opportunities, but petitioner failed to follow up on those leads. *Ibid.* Instead, while petitioner was out on state bond in his marijuana-trafficking case and under federal supervision, he began trafficking cocaine. *Id.* at 1. In May 2016, an Ohio state grand jury issued a new indictment charging petitioner with five counts of cocaine trafficking, and the state court revoked petitioner's bond in his marijuana-trafficking case. J.A. 35; June 2016 Report 2; 15-cr-291 Docket entry (May 31, 2016); 16-cr-555 Docket entry (Ohio Mahoning Cnty. Ct. of Common Pleas May 26, 2016).

On June 1, 2016, approximately four years and three months into his five-year term of supervised release, petitioner was arrested by state authorities and "incarcerated in the Mahoning County Jail" as a result of the new

indictment. J.A. 35 (citation omitted); see J.A. 35 n.2 (noting "minor confusion" in the record regarding whether petitioner entered state custody on May 26 or June 1). Petitioner has been in state custody since that time.[1] J.A. 35; see Pet. Br. 8.

3. After petitioner was incarcerated by the State on June 1, 2016, the Probation Office "tolled" his federal supervision, on the ground that petitioner had "made himself unavailable for supervision." J.A. 21. Petitioner's federal probation officer later explained that, because petitioner was in jail, "[h]e wasn't available for supervision" because "he wasn't available for [the Probation Office] to supervise on the street." J.A. 21-22.

Also in June 2016, petitioner's probation officer filed a report advising the district court of petitioner's new drug-trafficking charges and alleging that those charges showed a failure to comply with the conditions of his federal supervised release. June 2016 Report 1-2. The probation officer also informed the district court that the state court had revoked petitioner's bond on the marijuana-trafficking charges and that petitioner was "currently being housed in the Mahoning County Jail." *Id.* at 2. The probation officer stated that he would continue to monitor petitioner's pending state cases and would ask the court to take action if petitioner were convicted on any of the state charges. *Ibid.*

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[1] According to the public website for the Ohio Department of Rehabilitation & Correction, petitioner is currently imprisoned in the Lake Erie Correctional Institution. See Ohio Dep't of Rehabilitation & Corr., *Offender Details*, https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A694161 (offender details for Jason Mont) (last visited Jan. 15, 2019).

C. Petitioner's State Guilty Plea And Delayed Sentencing With Credit For Time Served

In October 2016, approximately four months into his state incarceration, petitioner entered into plea agreements with state prosecutors in both of his state cases, agreeing to plead guilty to some of the charges in each case "in exchange for a predetermined six-year sentence." J.A. 36; see 15-cr-291 Docket entry at 1-7 (Oct. 7, 2016) (plea agreement in 2015 case); D. Ct. Doc. 95-1, at 1-7 (Nov. 2, 2016) (plea agreement in 2016 case). The state court accepted petitioner's guilty pleas at a hearing on October 6, 2016, setting the cases for sentencing in December 2016, and those pleas were entered on the state dockets on October 7, 2016. D. Ct. Doc. 95-1, at 8-9; 15-cr-291 Docket entry at 8-9 (Oct. 7, 2016); 16-cr-555 Docket entry at 8-9 (Oct. 7, 2016). Approximately three weeks later, petitioner filed a written "admission" in federal district court in which he "acknowledge[d] and admit[ted]" that he had violated the conditions of his supervised release "by virtue of his conviction following guilty pleas to certain felony offenses" in state court. D. Ct. Doc. 92, at 1 (Oct. 25, 2016) (capitalization omitted); see J.A. 36.

Petitioner sought a federal hearing on the pending allegations of federal supervised-release violations at the district court's "earliest convenience," even though he "had not yet been officially sentenced for the new, state-court convictions." D. Ct. Doc. 92, at 1; J.A. 36. The district court initially scheduled a hearing for November 9, 2016, J.A. 36, but ultimately declined to hold the hearing until the state sentencing had occurred. Over petitioner's objection, the court moved the original hearing date after learning that petitioner had not yet been sentenced in his state cases. *Ibid.*; D. Ct. Doc. 95,

at 2 (Nov. 2, 2016); 11/4/16 Order. After a postponement of petitioner's state sentencing to mid-January 2017, the district court moved petitioner's federal hearing to late January 2017. 12/21/16 Order. And when the state court entered an order delaying the state sentencing until after the federal supervised-release-violation hearing, the district court granted the government's motion (over petitioner's opposition) to continue the federal hearing, explaining that it would not set a new date for the supervised-release-violation hearing "until after the conclusion of the State sentencing." 1/20/17 Order; see D. Ct. Doc. 97, at 1-2 (Jan. 20, 2017).

Petitioner's state sentencing finally went forward on March 21, 2017, and the state court sentenced petitioner to a total of six years of imprisonment for his various state counts of conviction. J.A. 36. The state court "credited the roughly ten months that [petitioner] had already been incarcerated pending a disposition as time served" toward his sentences in both state cases. *Ibid.*; see 15-cr-291 Docket entry at 2 (Mar. 23, 2017); 16-cr-555 Docket entry at 2 (Mar. 23, 2017).

D. Petitioner's Supervised-Release-Violation Proceedings

1. Following petitioner's state sentencing, his federal probation officer filed a report apprising the district court of petitioner's state convictions and sentences. J.A. 37; see D. Ct. Doc. 100 (March 2017 Report), at 1-2 (Mar. 30, 2017). The report alleged that petitioner's state convictions indicated that petitioner had violated the conditions of supervised release. March 2017 Report 1. On March 30, 2017, the district court ordered the issuance of a warrant based on the allegations in the report. *Id.* at 4; J.A. 37. And the district court held a hearing on petitioner's supervised-release violations on June 28, 2017. J.A. 37.

Petitioner argued that the court lacked authority to adjudicate the alleged violations, asserting that his term of supervised release had expired on March 6, 2017, while he was in state jail. J.A. 37. The court, however, found that it did have such authority. J.A. 24, 37. It stated that it had "give[n] notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." J.A. 37-38 (quoting J.A. 22) (brackets in original). And it cited 18 U.S.C. 3583(i), which provides that a court's "power" to revoke a term of supervised release for a violation of its conditions "extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." *Ibid.*; see J.A. 23, 38. The court found that the period between petitioner's October 2016 guilty plea and the June 2017 supervised-release-violation hearing was "reasonably necessary" because petitioner's actions had "caused the various extensions of time of having the supervised release violation hearing." J.A. 24.

At the hearing, petitioner admitted to his state convictions, and the district court found that petitioner had violated the conditions of supervised release. J.A. 18-19. The court ordered a 42-month term of imprisonment, to run consecutive to petitioner's state sentences. J.A. 14, 32.

2. The court of appeals affirmed, rejecting petitioner's renewed contention that the district court had lacked continued authority over him because his supervised release had run its course while he was in state jail. J.A. 33-46.

The court of appeals observed that although petitioner's "supervised-release clock" was initially set to

expire on March 6, 2017, "the clock's countdown was not inexorable." J.A. 39. The court noted that 18 U.S.C. 3583(i) could have "extended" the time based on the issuance of a summons or warrant and that Section 3624(e) could have "paused" the time based on "'imprison[ment] in connection with a conviction for a Federal, State, or local crime'" for a period of at least 30 consecutive days. J.A. 39-40 (quoting 18 U.S.C. 3624(e)) (emphasis omitted).

Relying on circuit precedent, the court of appeals explained that Section 3624(e) tolls a term of supervised release when (1) "a defendant is held for thirty days or longer in pretrial detention," (2) "he is later convicted for the offense for which he was held," and (3) "his pretrial detention is credited as time served toward his sentence." J.A. 40 (quoting *United States* v. *Goins*, 516 F.3d 416, 417 (6th Cir.), cert. denied, 555 U.S. 847 (2008)). The court accordingly determined that petitioner's term of supervised release had been tolled during the "roughly ten months" that petitioner spent in state custody between his June 2016 arrest and his March 2017 state sentencing, a period that the state court had credited to his state sentence. J.A. 41; see J.A. 35-36. The court of appeals thus found "still quite a bit of time left on [petitioner's supervised-release] clock when the district court issued its warrant on March 30, 2017, triggering the 'extension' that 18 U.S.C. § 3583(i) in turn provides." J.A. 41-42 (citation omitted).

The court of appeals additionally observed that an extension under Section 3583(i) based on the warrant "was not itself necessary in this case because * * * there would have been time left on the clock in any event when [petitioner's] supervised-release-violation hearing finally occurred on June 28, 2017." J.A. 42 n.6. The

court concluded that, in light of its other determinations, it "need not consider" the government's alternative argument that "the district court's issuance of a summons" in November 2016 had itself "triggered an extension under § 3583(i)." J.A. 41 n.5 (citation and internal quotation marks omitted); see also J.A. 42 n.6.

SUMMARY OF ARGUMENT

The court of appeals correctly rejected petitioner's argument that he served the final nine months of his supervised-release term while in state jail awaiting trial and then sentencing on state charges. That period of incarceration, which interrupted his conditional liberty and derailed his transition back into the community, was not supervised release. It was instead part of his prison sentence for his state crimes. Particularly once petitioner had pleaded guilty to those crimes four months into his state confinement, that incarceration was "imprison[ment] in connection with a conviction" that tolled his term of supervised release under 18 U.S.C. 3624(e).

I. Section 3624(e) provides that "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. 3624(e). The broad wording of that provision encompasses pretrial or other presentencing confinement that is later credited to the defendant's sentence for a crime. Time that a defendant spends confined in a jail or prison is a "period in which [he] is imprisoned," and that imprisonment is "in connection with a conviction" when it is credited toward the sentence of imprisonment for that conviction. By using the expansive phrase "in connection with" to describe the relationship between a period of imprisonment and a conviction,

Congress signaled that it did not intend to limit the tolling provision's application solely to imprisonment occurring "after" or "as a result of" a conviction.

The capacious language of Section 3624(e) accords with the overall design of the supervised-release scheme. Supervised release is a transitional period between imprisonment and complete freedom, during which a defendant enjoys a form of conditional liberty and a probation officer supervises the defendant to help him reacclimate to life in the community. When the defendant is jailed for a new crime, however, that confinement interrupts his transition back into the community and generally prevents the full supervision that makes supervised release a meaningful tool for rehabilitation. As this Court has recognized in other contexts, it frustrates the objectives of supervised release if incarceration reduces the amount of time the defendant spends under supervision during a period of conditional liberty. Section 3624(e) embodies Congress's judgment that a defendant on supervised release who commits another crime is not entitled to double-count his incarceration for that crime as part of his supervised release. And that judgment applies equally to his entire prison sentence for that crime, regardless of whether it was served before or after the trial or sentencing hearing.

Petitioner's contrary view is unsound. He errs in interpreting Section 3624(e)'s present-tense phrasing as a limitation on the natural scope of the phrase "in connection with a conviction." Although it may not be clear at the precise moment when a defendant is first incarcerated whether he will eventually be convicted, and thus whether Section 3624(e) will apply, it was neither incongruous nor unique for Congress to use the present tense to refer to tolling that is contingent on a later event.

And even on petitioner's interpretation of Section 3624(e), an immediate tolling determination will not always be possible; because the tolling provision does not apply to imprisonment "for a period of less than 30 consecutive days," 18 U.S.C. 3624(e), its application may not be apparent until the imprisonment reaches its thirtieth day. Any initial indeterminacy in Section 3624(e)'s application is unproblematic because, whether or not Section 3624(e) applies, a probation officer cannot as a practical matter supervise an incarcerated defendant in the manner contemplated by the supervised-release scheme. The tolling analysis required by Section 3624(e) thus need not occur until a defendant's release from custody, at which point it should be apparent whether the imprisonment was "in connection with a conviction."

II. The district court had authority to adjudicate petitioner's supervised-release violations at the hearing it held on June 28, 2017. Under Section 3624(e), the tolling of petitioner's term of supervised release began on June 1, 2016, when he was first imprisoned for state crimes for which he was later convicted, and will end upon his release from imprisonment for those state convictions. The state court deemed that entire period of incarceration to be part of the penalty for petitioner's state convictions, and the entire period is thus imprisonment "in connection with a conviction" that tolls supervised release.

At a minimum, tolling began on October 6, 2016, when petitioner pleaded guilty to his state crimes and remained imprisoned while awaiting his state sentencing. The period of incarceration that followed was both punishment for the state crimes and a means of ensuring petitioner's appearance for sentencing and the imposition of judgment. The "connection" between the

confinement and petitioner's state convictions was immediately apparent once the plea was accepted, and the supervised-release term was tolled at that time under any reasonable construction of Section 3624(e). Section 3624(e)'s use of the word "conviction" bolsters that conclusion because, in the context of that provision, the term refers to the finding of guilt by trial or plea that occurs before sentencing and the entry of judgment.

ARGUMENT

Petitioner is not entitled to count his ten months of presentencing state imprisonment, which were deemed part of his sentence for other crimes, as part of his term of federal supervised release for the underlying offenses in this case. Rather than spending that time reacclimating to society under the supervision of the Probation Office, demonstrating his ability to behave lawfully when entrusted with conditional liberty, petitioner spent it in state jail after he was taken into custody for drug-trafficking crimes for which he has been convicted and credited for time served. His state incarceration was accordingly a period of "imprison[ment] in connection with a conviction for a Federal, State, or local crime" that tolled his term of supervised release under 18 U.S.C. 3624(e). That is particularly so with respect to the more than five months of imprisonment that followed petitioner's formal admission of guilt by plea to the state charges, a period during which petitioner was awaiting the imposition of punishment for his convictions. Petitioner accordingly errs in suggesting that his term of supervised release in fact expired during that time.

I. SECTION 3624(e) TOLLS A TERM OF SUPERVISED RELEASE DURING PRESENTENCING CONFINEMENT THAT IS CREDITED TOWARD A CRIMINAL SENTENCE

A federal defendant cannot run out the clock on his supervised release while sitting in jail for an extended period following his commission of another offense for which he is ultimately convicted and credited with time served. Under 18 U.S.C. 3624(e), "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." As a matter of plain language, any period of confinement that is credited against a sentence of imprisonment for a crime is "imprison[ment] in connection with a conviction" for that crime. *Ibid.* The evident meaning of the text is confirmed by the design of supervised release, which is to help the defendant reintegrate into the population at large—not into the population of another prison—and the statutory presumption against double-counting prison terms toward sentences imposed at different times. Contrary to petitioner's contention, it is both unsound and unnecessary to bifurcate a continuous state prison sentence into different periods that are treated inconsistently for purposes of tolling a term of federal supervised release.

A. Incarceration That Is Deemed Part Of The Sentence For A Crime Is "Imprison[ment] In Connection With A Conviction"

The expansive text of Section 3624(e) plainly encompasses a defendant's pretrial or other presentencing confinement that is later incorporated as part of the sentence for a crime of which he is found guilty. The

time behind bars is a "period in which [he] is imprisoned"; the adjudication or judgment of his guilt is a "conviction for a * * * crime"; and the crediting of the time against the sentence for that crime is a "connection" between the two. 18 U.S.C. 3624(e).

1. The phrase "period in which the person is imprisoned" unambiguously includes any length of time during which the defendant is confined in jail or otherwise incarcerated, regardless of the reason or timing of that incarceration. Even if a defendant has not yet been tried or sentenced, his confinement means that he is "imprisoned" within the ordinary meaning of that word. See *The Oxford English Dictionary* 113 (reprint 1978) (1933) (defining "imprison" to mean "[t]o put into prison, to confine in a prison or other place of confinement; to detain in custody, to keep in close confinement; to incarcerate"); *Webster's Third New International Dictionary* 1137 (1993) (defining "imprison" to mean "to put in prison: confine in a jail" or "to limit, restrain, or confine as if by imprisoning"); *Black's Law Dictionary* 681 (5th ed. 1979) (defining "imprison" to mean "[t]o put in a prison; to put in a place of confinement" or "[t]o confine a person, or restrain his liberty, in any way").

Congress's use of "imprisoned" and similar terms elsewhere in Title 18 confirms its understanding that the term encompasses pretrial detention and other presentencing confinement. See 18 U.S.C. 3041 ("[T]he offender may * * * be arrested and imprisoned or released * * * for trial."); 18 U.S.C. 3626(g)(5) (defining "prison" to include "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of * * * violations of criminal law"). And this Court has itself used the words "imprison" or "imprisoned" to describe pretrial confinement. See *Bell* v. *Wolfish*, 441 U.S.

520, 534 n.15 (1979) (discussing requirements with which the government must comply "[i]n order to imprison a person prior to trial"); *McDonald* v. *Board of Election Comm'rs of Chi.*, 394 U.S. 802, 806 (1969) (referring to "pretrial detainees imprisoned in other States"); see also *McGinnis* v. *Royster*, 410 U.S. 263, 281 (1973) (Douglas, J., dissenting) ("In New York City as of 1964, 49% of those accused were imprisoned before trial.").

2. As this Court has recognized, "the word 'conviction' can mean either the finding of guilt or the entry of a final judgment on that finding." *Deal* v. *United States*, 508 U.S. 129, 131-132 (1993). The context here indicates the former meaning, see Part II.B, *infra*, but either definition would dictate that a defendant who has been sentenced to a term of imprisonment and credited for time served has a "conviction for a * * * crime," 18 U.S.C. 3624(e).

A sentence to a term of imprisonment necessarily reflects—and is inherently connected to—the presence of a "conviction." The "conviction" is either a "finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction" or the "judgment of conviction" itself, which "includes both the adjudication of guilt and the sentence." *Deal*, 508 U.S. at 132. Thus, the imposition of a sentence indicates either that the defendant has already been convicted or that a conviction was entered simultaneously.

3. The crediting of time served before sentencing—including time served before trial—against a sentence establishes that the time served was "in connection with" the "conviction" for which the sentence was imposed, 18 U.S.C. 3624(e). Although the precise point at

which one thing ceases to be "in connection with" another can in many circumstances be "indeterminate," *Maracich* v. *Spears*, 570 U.S. 48, 59 (2013) (brackets and citation omitted), the clear and direct "connection" between the conviction and the time served in prison fits comfortably within the scope of any reasonable construction of the phrase in the context of Section 3624(e).

This Court, like other courts, has recognized the capaciousness of the phrase "in connection with." See, *e.g.*, *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 84-85 (2006) (noting that the Court "has espoused a broad interpretation" of the phrase "'in connection with the purchase or sale'" in the context of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b)); *United States* v. *American Union Transp., Inc.*, 327 U.S. 437, 441-443 (1946) (describing the use of "in connection with" in the Shipping Act, 1916, ch. 451, 39 Stat. 728, as "broad and general"); see also *United States* v. *Loney*, 219 F.3d 281, 283-284 (3d Cir. 2000) (observing that dictionaries and usage experts give "expansive" scope to the phrase "'in connection with'" as "express[ing] some relationship or association, one that can be satisfied in a number of ways"); *United States* v. *Thompson*, 32 F.3d 1, 7 (1st Cir. 1994) ("[T]he phrase 'in connection with' should be interpreted broadly."). Conscious that, as a literal matter, "connections * * * 'stop nowhere,'" the Court has emphasized the need to apply a "limiting principle" tailored to the context in which the phrase appears. *Maracich*, 570 U.S. at 59-60 (citation omitted). Here, however, a limiting principle that excludes all pretrial or other presentencing incarceration from the scope of tolling under Section 3624(e) would effectively rewrite the statute.

If Congress had intended such a limitation, it had many other terms at its disposal—ones that appear elsewhere in the federal code but are conspicuously absent from Section 3624(e)'s tolling provision. For example, if Congress had wanted to restrict the tolling provision to imprisonment *following* a conviction, it could have written the provision to cover only imprisonment "after" a conviction. See, *e.g.*, 18 U.S.C. 1074(a) (criminalizing "mov[ing] or travel[ing] in interstate or foreign commerce with intent * * * to avoid prosecution, or custody, or confinement after conviction" for certain damage or destruction of property); Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, Ch. I, § 209(d)(4), 98 Stat. 1987 (amending Fed. R. Crim. P. 46(h) (1984) to permit a court to "dispos[e] of any charge by entering an order directing forfeiture of property * * * if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged").

Likewise, if Congress had wanted to limit the tolling provision to imprisonment *caused* by a conviction, it could have conveyed such a requirement by drafting the provision to apply when a person is imprisoned "because of," "as a result of," or "based on" a conviction. See *Burrage* v. *United States*, 571 U.S. 204, 212-214 (2014) (citations omitted) (discussing the effect of such terms); see, *e.g.*, 18 U.S.C. 3572(b) (addressing imposition of monetary penalty "[i]f, as a result of a conviction, the defendant has the obligation to make restitution"); 20 U.S.C. 6472(1) ("The term 'adult correctional institution' means a facility in which persons * * * are confined as a result of a conviction for a criminal offense."); 29 U.S.C. 504(d)(1) (addressing certain persons who "ha[ve] been barred from office or other position in

labor organization as a result of a conviction"); cf. 18 U.S.C. 3585(b)(1) (addressing credit for certain presentencing time a defendant "has spent in official detention * * * as a result of the offense for which the sentence was imposed").

Congress, however, did neither of those things. It instead used the broader phrase "in connection with." In doing so, it made clear that it did not intend to require either a temporal or a causal connection between a conviction and a period of imprisonment. And no reason exists to infer any atextual limitation under which a portion of a sentence would lack a "connection" to the underlying conviction. This is not a context in which applying a naturally broad meaning of the phrase "in connection with" would give a statute unlimited reach or otherwise extend it beyond any conceivable congressional intent. See, *e.g.*, *Maracich*, 570 U.S. at 59. The range of ways in which a period of imprisonment could reasonably be "in connection with" a conviction is quite limited.

Nothing suggests that Congress was averse to including all of them—or, at least, the one at issue here. Not only did Congress choose the broader language over narrower alternatives, but the Senate Report on the original version of the tolling provision, which was part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, does not include a limiting phrase at all when describing the tolling rule's effect. S. Rep. No. 225, 98th Cong., 1st Sess., at 148-149 (1983) (Senate Report) (explaining that a term of supervised release "runs concurrently with any other term of supervised release, probation, or parole unless the person is imprisoned other than for a brief period as a con-

dition of probation or supervised release").[2] Thus, neither context nor any other potential evidence of legislative intent suggests an artificially narrow interpretation of imprisonment "in connection with a conviction" that would exclude pretrial or presentencing incarceration that is counted as part of the sentence for a conviction.

B. Prolonged Incarceration For A Separate Criminal Offense Cannot Meaningfully Substitute For Federal Supervised Release

The breadth of Section 3624(e) in this respect furthers the design and purpose of supervised release. "Congress intended supervised release to assist individuals in their transition to community life," *United States* v. *Roy Lee Johnson*, 529 U.S. 53, 59 (2000), not prison life. It is therefore undisputed that Section 3624(e) requires that a term of supervised release be tolled for any period of imprisonment that *follows* a conviction for a separate criminal offense. See Pet. Br. 17-19, 24-26. And the same logic applies to any other period of imprisonment attributable to that conviction.

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[2] The original version of the tolling rule provided that a term of supervised release runs concurrently with a term of probation, supervised release, or parole for another offense, "except that it does not run during any period in which the person is imprisoned, other than during limited intervals as a condition of probation or supervised release, in connection with a conviction for a Federal, State, or local crime." 18 U.S.C. 3624(e) (Supp. II 1984). The current tolling provision, enacted in 1986, modified the original exception for short periods of confinement but retained the other operative language in the provision without altering its meaning. See 18 U.S.C. 3624(e); Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 16, 100 Stat. 3595.

1. Imprisonment for a separate crime interrupts the function of supervised release

A defendant who is imprisoned for a separate crime while on supervised release cannot meaningfully continue his supervised release during his period of incarceration. During that period, he is not reacclimating to liberty through the mechanism of supervised release; he is instead back in a correctional facility as a result of his own recidivist criminal behavior.

a. This Court has recognized that "the evident congressional purpose" of supervised release "is to improve the odds of a successful transition from the prison to liberty." *Cornell Johnson* v. *United States*, 529 U.S. 694, 708-709 (2000). The Senate Report accompanying the Sentencing Reform Act "was quite explicit about this, stating that the goal of supervised release is 'to ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release." *Id.* at 709 (quoting Senate Report 124).

Because it is designed to facilitate a former prisoner's reassimilation into the community, supervised release is fundamentally incompatible with incarceration. As its name suggests, supervised release is a "form of *postconfinement* monitoring," *Cornell Johnson*, 529 U.S. at 697 (emphasis added), that does not begin until "the person is released from imprisonment," 18 U.S.C. 3624(e). "Supervised release has no statutory function until confinement ends." *Roy Lee Johnson*, 529 U.S. at 59. And it cannot meaningfully be sustained when a defendant *returns* to prison for a prolonged period.

Although a probation officer may sometimes continue monitoring a defendant during a period of incarceration, any such contact generally will not constitute the supervision that supervised release demands. A defendant's lack of freedom while incarcerated will often prevent him from exercising the autonomy required for proactive compliance with conditions of supervised release. Supervised-release conditions typically include affirmative steps intended to rehabilitate the defendant and make him a productive member of the community—*e.g.*, a requirement to "support his dependents and meet other family responsibilities," 18 U.S.C. 3563(b)(1), or to "work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment," 18 U.S.C. 3563(b)(4); see 18 U.S.C. 3583(d) (Supp. V 2017); Judgment 3 (imposing similar conditions on petitioner's supervised release). But a defendant who is confined is unlikely to be able to take such steps.

At the same time, an imprisoned defendant's compliance with prohibitory supervised-release conditions—conditions that require the defendant to refrain from certain actions that are antithetical to a successful transition to the community—will largely be meaningless when the defendant is incarcerated. For example, an imprisoned defendant will not have the same opportunities to violate the mandatory conditions that he "not commit another Federal, State, or local crime" or "not unlawfully possess a controlled substance," 18 U.S.C. 3583(d) (Supp. V 2017), as he would on the outside. See also *ibid.* (authorizing imposition of discretionary conditions set forth in 18 U.S.C. 3563(b)); 18 U.S.C. 3563(b)(7) (requiring defendant to "refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled

substance * * * without a prescription"); 18 U.S.C. 3563(b)(8) (requiring defendant to "refrain from possessing a firearm, destructive device, or other dangerous weapon"); Judgment 3 (imposing similar conditions in petitioner's case). As a result, a defendant's compliance with such conditions while he is imprisoned may well reflect only his incapacitation, rather than any rehabilitation that would signal his readiness to reenter society unconditionally and without further monitoring.

b. This Court has accordingly recognized on multiple occasions that imprisonment cannot itself do the work of a postconfinement-monitoring scheme like supervised release. The Court first did so in a case that considered the former federal parole system, which was the precursor and close analogue of the current supervised-release system, see *Cornell Johnson*, 529 U.S. at 710-711. In *Zerbst* v. *Kidwell*, 304 U.S. 359 (1938), the Court rejected the claim of two defendants that their terms of parole had continued running while they were imprisoned for separate offenses committed during that parole. See *id.* at 360-364. The Court reasoned that when a defendant has "committed a federal crime while on parole, for which he was arrested, convicted, sentenced and imprisoned, not only was parole violated, but service of his original sentence was interrupted and suspended." *Id.* at 361. "It is not reasonable," the Court explained, "to assume that Congress intended that a parolee whose conduct measures up to parole standards should remain under control of the [Parole] Board until expiration of the term of his sentence, but that misconduct of a parole violator could result in reducing the time during which the Board has control over him to a period less than his original sentence." *Id.* at 363.

The only case in which this Court has considered Section 3624(e) at any length is to similar effect. In *United States* v. *Roy Lee Johnson*, *supra*, the Court held that Section 3624(e) "does not reduce the length of a supervised release term by reason of excess time served in prison." 529 U.S. at 60; see *id.* at 56-60. The defendant in that case had been released from federal prison after two of his convictions were declared invalid, indicating that he had served too much prison time. *Id.* at 54. The defendant argued that "the excess prison time should be credited to the supervised release term" on the remaining convictions. *Ibid.*; see *id.* at 56-60. In rejecting that argument, the Court relied not only on the text of Section 3624(e) but also on "the statute's purpose and design." *Id.* at 59. The Court explained, in particular, that "time in prison" is not "interchangeable with [a] term of supervised release," observing that "supervised release, unlike incarceration, provides individuals with postconfinement assistance." *Id.* at 60. Emphasizing the "rehabilitative ends" of supervised release and its role in "assist[ing] individuals in their transition to community life," the Court observed that "[t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release." *Id.* at 59.

Indeed, the Court has recognized that defendants who are imprisoned during a term of supervised release may have a particularly *acute* need for supervised release when they emerge. In *Cornell Johnson* v. *United States*, *supra*, the Court construed a prior version of 18 U.S.C. 3583 to allow a court that had ordered a defendant's reimprisonment following a violation of his supervised-release conditions to also order that the de-

fendant serve additional time on supervised release after his reimprisonment (as the current version of the statute now explicitly authorizes). See 529 U.S. at 702-713. The Court explained that "forbidding the reimposition of supervised release after revocation and reimprisonment would be fundamentally contrary to th[e supervised-release] scheme," which relies on district courts "to allocate supervis[ed]" release to the defendants who most need it. *Id.* at 709. The Court reasoned, in part, that "if any prisoner might profit from the decompression stage of supervised release, no prisoner needs it more than one who has already tried liberty and failed." *Ibid.*

2. The rationales for tolling supervised release when a defendant is incarcerated in connection with a conviction apply equally to all imprisonment credited toward a prison sentence

Consistent with the rehabilitative aim of supervised release, the tolling requirement of Section 3624(e) embodies Congress's judgment that a defendant's incarceration in connection with a separate criminal offense should not shorten a preexisting term of supervised release. In the absence of Section 3624(e)'s tolling requirement, a defendant who begins supervised release and then is imprisoned for another crime would spend less time in the community under the supervision of a probation officer than the district court deemed necessary, simply because of his own criminal conduct. Indeed, that defendant's period of actual supervision would be shorter than that of a defendant who received an equivalent supervised-release term but complied with all laws and conditions of supervised release. The reasons for avoiding that result, by tolling the term of supervised release during a defendant's incarceration

for a separate crime, apply in equal measure both to pretrial (or presentencing) incarceration and to posttrial (or postsentencing) incarceration.

a. A defendant is no more available for supervised release during confinement before trial or sentencing than he is during confinement after. And tolling only for the latter period would create unjustifiable disparities between the situations of similarly situated defendants. Two defendants who each receive five-year terms of supervised release, and then commit state crimes for which they are sentenced to three years of state imprisonment, should each have their supervised-release terms tolled for the whole three years in which they are not reassimilating into the community at large. It would make no sense to distinguish between the defendants based simply on how long it took for each case to reach sentencing, which in turn depends on circumstances wholly unrelated to the purposes of the tolling provision. Neither the quirks of state judges' schedules, the defendants' different timelines for pleading guilty, nor the delay of a trial due to the unavailability of a witness should affect how long each defendant spends reacclimating to life on the outside, under the auspices of supervised release, once the three-year prison sentence concludes.

Section 3624(e)'s mandatory tolling rule draws only two distinctions, neither of which suggests differential treatment of pretrial (or other presentencing) incarceration and posttrial (or postsentencing) incarceration. First, the rule excepts periods of incarceration that last less than 30 days. See 18 U.S.C. 3624(e). That limitation reflects that a relatively short interruption will not unduly disrupt or delay the defendant's efforts to transition into the community. No analogous reason exists

to except longer periods of pretrial or other presentencing incarceration. Second, the tolling requirement does not apply to defendants who are incarcerated but are later acquitted or released without trial. See *ibid.* That limitation reflects that such a disposition does not itself contain any adjudication of wrongdoing that would warrant *automatic* tolling; the arrest and imprisonment may, for example, have simply been a mistake. Without an adjudication of guilt, it is unclear that a defendant has "tried liberty and failed," *Cornell Johnson*, 529 U.S. at 709; instead, the court with authority over the defendant's supervised release may independently determine what happened and, potentially, adjust the term of supervised release accordingly, see 18 U.S.C. 3583(e). But when a defendant *has* been found guilty of a crime and sentenced for it, no sound reason exists to presumptively treat differently the portion of the sentence served before trial or sentencing and the portion of the sentence served after.

b. Treating the entirety of a prison sentence as an interruption—rather than a continuation—of supervised release is also in harmony with the federal sentencing scheme's default rule against allowing a newly imposed prison sentence to ameliorate a preexisting punishment. Federal law provides, for example, that "[m]ultiple terms of imprisonment imposed at different times run consecutively" unless the court orders otherwise. 18 U.S.C. 3584(a). Accordingly, a defendant who is serving (or about to serve) a term of imprisonment for one offense, and then commits a second offense, typically has no expectation that his sentence for the second crime will offset the first. See *ibid.*; United States Sentencing Guidelines § 5G1.3(a) (recommending that sentences should run consecutively in that circumstance).

No reason exists to create such an expectation for a defendant who is on supervised release, rather than in prison, when he commits the second crime.

The principle against double counting is made even more explicit in 18 U.S.C. 3585(b), which addresses whether and when prior confinement can be credited against a subsequently imposed federal prison sentence. In addition to giving a defendant credit for time served on the underlying offense of conviction (such as time in pretrial detention), 18 U.S.C. 3585(b)(1), it also gives a defendant credit for certain other time spent in detention, 18 U.S.C. 3585(b)(2)—but only if that time "has not been credited against another sentence," 18 U.S.C. 3585(b). By limiting credit to time served and time that would otherwise be uncredited, "Congress made clear that a defendant could not receive *double* credit for his detention time." *United States* v. *Wilson*, 503 U.S. 329, 337 (1992) (emphasis added). Such "double credit" is similarly unwarranted in the context of a defendant who seeks to count prison time against his term of supervised release.

Indeed, the principle against double counting carries particular force when the penalties are of different types. This Court has recognized that "[i]t would be anomalous to interpret § 3585(b) to require sentence credit for time spent confined in a community treatment center," because "Congress generally views such a restriction on liberty as a part of a sentence of 'probation' or 'supervised release,' rather than part of a sentence of 'imprisonment.'" *Reno* v. *Koray*, 515 U.S. 50, 59 (1995) (citations omitted). The mirror-image scenario—allowing a portion of a term of imprisonment for one crime to offset a defendant's term of supervised release for another crime—would be equally, if not more, "anomalous."

Nothing in the statutory scheme suggests that Congress intended that such a period of imprisonment presumptively count as *both* the sentence for the second crime *and* part of the supervised-release term for the original crime. Section 3624(e) is instead best interpreted, under its plain terms, to require precisely the opposite result.

C. Petitioner's Interpretation Of Section 3624(e) Is Flawed

On petitioner's view, Section 3624(e) excises the pretrial (or presentence) portion of a prison sentence for purposes of tolling, allowing any such period to qualify as both imprisonment on one offense and supervised release for another. That view is unsound.

1. Petitioner errs in suggesting (Br. 27-28) that the broad phrase "in connection with" serves only to ensure that federal supervised release is tolled during a period of "imprisonment for violation of parole or supervised release" for a separate crime. Congress's language plainly does more than simply ensure that a period of supervised release for crime B is tolled during reincarceration for a violation of parole or supervised release on crime A. As this Court has recognized, incarceration for such a violation amounts to "reimprisonment" that should be treated "as part of the penalty for the initial offense." *Cornell Johnson*, 529 U.S. at 700. Because such incarceration is thus "attribut[able] * * * to the original conviction," *id.* at 701, it would constitute a period in which a defendant is imprisoned "after" or "as a result of" a conviction. Accordingly, Congress did not need to use the more expansive phrase "in connection with" to ensure that the tolling provision covered such confinement, and the phrase should not be artificially limited to that circumstance. The natural import of the language Congress chose covers *all* imprisonment that is

related to a conviction, necessarily including time served that is credited against the sentence imposed for that conviction.

Petitioner's focus (Br. 17-22) on Section 3624(e)'s use of the present tense—namely, its specification that a supervised-release term "does not run" during certain periods in which a defendant "is imprisoned in connection with a conviction," 18 U.S.C. 3624(e)—is likewise misplaced. The Dictionary Act, 1 U.S.C. 1, provides that, "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] * * * words used in the present tense include the future as well as the present." *Ibid.*; see, *e.g.*, *Carr* v. *United States*, 560 U.S. 438, 449 (2010) (observing that "a statute's undeviating use of the present tense is a striking indicator of its prospective orientation") (brackets, citation, and internal quotation marks omitted). Accordingly, Section 3624(e)'s use of the present tense dictates that the tolling provision applies to imprisonment whose "connection with a conviction" is apparent either at its inception or at the time of a later inquiry.

Petitioner acknowledges (Br. 22) that a slightly tweaked version of the current language—with a different tense of the verb "is"—would, even in his view, unambiguously have tolled supervised release during the pretrial (or presentencing) portion of a prison sentence. In recognizing that such a minor change would be sufficient, petitioner tacitly acknowledges that the phrase "in connection with" itself encompasses such incarceration. And he errs in faulting Congress for not adopting a different verb tense. Given the breadth of the phrase "in connection with a conviction" and the other language of the provision, Congress would have been leaning on a slender reed if it had relied upon the verb tense of the

word "is" to exclude all pretrial and presentence confinement.

Even if some alternative version of the word "is" might have done a better job of reinforcing the undisputed breadth of the phrase "in connection with," Congress had ample reason to believe that the language it adopted was sufficient. See *Caraco Pharm. Labs., Ltd.* v. *Novo Nordisk A/S*, 566 U.S. 399, 416 (2012) ("[T]he mere possibility of clearer phrasing cannot defeat the most natural reading of a statute."). Although some tolling provisions employ a mixture of present and past tenses (see, *e.g.*, 38 U.S.C. 3103(b)(3)), Section 3624(e) is not the only one in which Congress has used the present tense to describe tolling that may be determined in a later inquiry. Indeed, Congress did so in 18 U.S.C. 3292, which it enacted in the same omnibus legislation that included the Sentencing Reform Act's original version of Section 3624(e). See Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, Chs. II, XII, §§ 212(a), 1218(a), 98 Stat. 2008, 2167.

Section 3292 authorizes a "period of suspension" of a criminal statute of limitations that "shall begin on the date on which [an] official request is made" by the government for evidence from a foreign country. 18 U.S.C. 3292(b). The tolling effect of the official request, however, is contingent on a district court's *later* exercise of authority to "suspend the running of the statute of limitations," upon a finding that the request satisfied certain requirements. 18 U.S.C. 3292(a)(1); see 18 U.S.C. 3292(a)(2) (timing requirements for court ruling). Notwithstanding the retrospective nature of the court's action, the statute uses present- and future-tense phrases —allowing the court to "*suspend* the running of" the statute of limitations for a period that "*shall* begin"

when the "official request *is* made"—to describe the tolling. 18 U.S.C. 3292(a)(1) and (b) (emphasis added). Just as Congress saw no incongruity in that formulation, it would have seen no incongruity in its similar use of the present tense in Section 3624(e).

2. Petitioner separately contends (Br. 26-27) that Congress could not have intended to toll supervised release during the pretrial portion of a criminal sentence, because a probation officer—who will not know the outcome of a future trial or sentencing—will lack certainty about whether a defendant should be supervised while he is incarcerated pending trial or sentencing. That contention is flawed. The just-discussed example of Section 3292, which requires a judicial determination to trigger an earlier period of tolling, illustrates that Congress sometimes enacts tolling provisions whose application may not be determinable up front. See, *e.g.*, *United States* v. *Trainor*, 376 F.3d 1325, 1330-1336 (11th Cir. 2004) (affirming district court's refusal to issue Section 3292 tolling order after an official request). Section 3624(e) is another such provision; even on petitioner's reading, an immediate tolling determination will not always be possible. And any indeterminacy in the potential supervision of an incarcerated defendant, who is inherently unable to participate in supervised release while behind bars, creates no significant practical difficulties.

Regardless of how the question presented here is resolved, Section 3624(e) would not always allow for instant determination of whether a defendant's supervised-release clock is continuing to run while he is imprisoned. Because the tolling provision does not apply to any period of imprisonment "for a period of less than 30 consecutive days," 18 U.S.C. 3624(e), its application may

not be apparent until the thirtieth day of a defendant's imprisonment. Even when a defendant is imprisoned after a conviction, it may not be clear how long the imprisonment will last—and thus whether the supervised-release term should be tolled. Not only do some States have indeterminate sentencing schemes, see Aaron Rappaport, *The Institutional Design of Punishment*, 60 Ariz. L. Rev. 913, 920-921 & nn.26-27 (2018), but even in a determinate system like the federal one, the length of imprisonment will not always be apparent up front. See, *e.g.*, 18 U.S.C. 3621(e)(2)(B) (authorizing the Bureau of Prisons to reduce "[t]he period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program"); 18 U.S.C. 3622 (authorizing temporary release in certain circumstances).

Congress had no reason to be troubled by such indeterminacy—or by indeterminacy as to whether imprisonment is "in connection with a conviction"—because it has little practical import. So long as a defendant remains incarcerated, he and his probation officer need not know whether that period of imprisonment will toll the defendant's term of supervised release. Whether or not the supervised-release term is tolled, an incarcerated defendant cannot be supervised in the normal manner. See pp. 23-25, *supra*. In this case, for example, the Probation Office determined that petitioner was "unavailable for supervision" once he was imprisoned because, at that point, he was no longer "available for [the Probation Office] to supervise on the street." J.A. 21-22.

To the extent that some degree of supervision may be possible while a defendant is imprisoned, such supervision would be significantly impaired. A clean drug

test behind bars does not demonstrate an ability to resist the temptations the defendant would face on the outside. Similarly, circumstances that would be supervised-release violations on the outside—*e.g.*, failure to attend his normal (out-of-prison) drug-counseling sessions, or to hold down a steady (out-of-prison) job—would not sensibly be deemed violations while the defendant is incarcerated. And if a defendant does engage in conduct that could meaningfully be considered a supervised-release violation even in prison—*e.g.*, commission of a crime—a probation officer can report it to the court, which can defer adjudication until other proceedings that may be relevant to his status are fully resolved (as the district court did here). See pp. 6-9, *supra*; see also 18 U.S.C. 3583(i) (allowing for postponement of supervised-release-violation adjudications when "reasonably necessary").

The tolling analysis required by Section 3624(e) thus need not occur in real-time. Aside from the circumstance where a probation officer alleges supervised-release violations while the defendant was imprisoned, which can be handled at an appropriate time by the district court, a tolling inquiry becomes necessary only after a defendant is released from imprisonment and it is necessary to know whether, or how long, the probation officer will continue to supervise the defendant in the community. But by that point, it should be apparent whether the imprisonment was "in connection with a conviction." Although petitioner asserts (Br. 28-29) that the connection may sometimes be difficult to determine, he provides no evidence that the rule reflected in the decision below—which four courts of appeals have followed for years, see Br. in Opp. 13-14—has in fact been problematic.

II. THE DISTRICT COURT HAD AUTHORITY TO ADJUDICATE PETITIONER'S SUPERVISED-RELEASE VIOLATIONS BECAUSE HIS TERM WAS TOLLED UNDER SECTION 3624(e)

The court of appeals correctly determined that the district court had authority to adjudicate his supervised-release violations at the hearing it held on June 28, 2017. Petitioner contends (Br. 29-35) that the district court lacked such authority, on the theory that his term of supervised release ended on March 6, 2017, and that the district court did not issue a warrant or summons before that date that might have preserved its adjudicatory authority under 18 U.S.C. 3583(i). See *ibid.* (allowing extension of authority beyond expiration of supervised-release term, where "reasonably necessary," following issuance of summons or warrant before the term's expiration).[3] His term of supervised release did not expire on that date, however, because Section 3624(e) tolled it starting on June 1, 2016, when his sentence for his state drug-trafficking crimes was deemed to begin. At a minimum, petitioner's supervised release was tolled by October 6, 2016, when he pleaded guilty to those crimes. Either way, the court of appeals' decision should be affirmed.

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[3] The parties have debated whether the district court issued a summons in November 2016, when petitioner's supervised-release term undisputedly had yet to expire. See 18 U.S.C. 3583(i); Gov't C.A. Br. 13-14; Br. in Opp. 17-18; Pet. Br. 34-35. Should the Court determine not to affirm the judgment below, it would be appropriate to remand for further proceedings on that issue, which the court of appeals did not fully consider in the first instance. See J.A. 41 n.5.

A. Petitioner's Supervised-Release Term Did Not Run During The Presentencing State Imprisonment That Was Credited Against His State Sentence

For the reasons set forth in Part I, *supra*, Section 3624(e) tolls a term of federal supervised release during any period that a defendant spends in presentencing confinement for another offense, where that period is later credited as time served on the defendant's term of imprisonment for that other crime. Application of that rule to the facts of this case results in the tolling of petitioner's supervised release beginning on June 1, 2016, when he was first imprisoned on state drug-trafficking charges, and ending when his prison sentence for his conviction on those charges concludes.

Petitioner was placed in state jail on his drug-trafficking charges on June 1, 2016. J.A. 35 & n.2. Petitioner has not disputed that the ensuing state custody—which continues to this day, see p. 7 & n.1, *supra*—is "imprison[ment]" for purposes of Section 3624(e). See Pet. Br. 25-27. On March 21, 2017, a state court sentenced him to a six-year prison term and "credited the roughly ten months that [he] had already been incarcerated pending a disposition"—*i.e.*, the time from June 1, 2016, through March 21, 2017—"as time served." J.A. 36; see 15-cr-291 Docket entry at 2 (Mar. 23, 2017); 16-cr-555 Docket entry at 2 (Mar. 23, 2017).

In these circumstances, petitioner's entire state term of imprisonment for drug-trafficking crimes—from June 1, 2016, through his state release date—is imprisonment "in connection with a conviction" that Section 3624(e) excludes from petitioner's term of supervised release. That term of supervised release had therefore not expired on June 28, 2017, when the district court adjudicated the supervised-release violations.

B. At A Minimum, Petitioner's Supervised-Release Term Tolled When He Pleaded Guilty To The State Charges

Like the court of appeals below, petitioner appears to use the term "pretrial detention" to describe both his initial detention and his time in presentencing confinement after his guilty plea. Pet. Br. 29; J.A. 41; see also Pet. Br. 15; Pet. 9, 18; Br. in Opp. 7. His asserted (Pet. Br. 29) "10 months of pretrial detention," however, straddles his guilty plea to the state crimes on October 6, 2016. Thus, even if petitioner were correct that his supervised release was not tolled for his period of pre-plea imprisonment, he cannot prevail on the question presented about the proper treatment of his "pretrial detention" (Pet. i) unless his supervised-release term also was not tolled during his post-plea imprisonment. But that latter period of imprisonment was even more clearly "in connection with a conviction."

1. Incarceration after a defendant has pleaded guilty, but before he is sentenced, is imprisonment "in connection with a conviction" under 18 U.S.C. 3624(e). A guilty plea is an "admission of guilt of a substantive criminal offense as charged in [the] indictment." *Libretti* v. *United States*, 516 U.S. 29, 38 (1995). Once a defendant has entered such a plea, "nothing remains but to give judgment and determine punishment." *Boykin* v. *Alabama*, 395 U.S. 238, 242 (1969). During that interim period, the admission of guilt in the plea provides a foundation for the defendant's imprisonment.

When a defendant is confined after a finding of guilt in anticipation of sentencing, that incarceration "is considered punishment for the offense" for which "a defendant will ordinarily earn time-served credit." *Betterman* v. *Montana*, 136 S. Ct. 1609, 1617 n.9 (2016); cf. *Spina* v. *Department of Homeland Sec.*, 470 F.3d 116, 127 &

n.9 (2d Cir. 2006) (citing statutes, rules, and court decisions from all 50 states and the District of Columbia that "provide * * * that time spent by a defendant in pre-conviction detention is to be treated as a day-for-day credit or reduction of the term of imprisonment imposed upon conviction"). And a key purpose of such confinement is to ensure that the defendant appears for sentencing and the imposition of judgment. See, *e.g.*, 18 U.S.C. 3143(a) (addressing detention of a defendant "who is awaiting imposition or execution of sentence").

Thus, whether viewed from the contemporaneous perspective of petitioner and his probation officer, or the later perspective of the district court, petitioner's guilty plea triggered a new "phase of the criminal-justice process"—one that this Court has in fact recently referred to as the phase "between *conviction* and sentencing." *Betterman*, 136 S. Ct. at 1617 (emphasis added); see *id.* at 1613. During that time, "the presumption of innocence no longer applies," *Deck* v. *Missouri*, 544 U.S. 622, 632 (2005), and the defendant may be treated as subject to incarceration as a convict, see *Betterman*, 136 S. Ct. at 1617 n.9. Indeed, under the Bail Reform Act—which Congress enacted in conjunction with the Sentencing Reform Act that included the original version of Section 3624(e), see *Koray*, 515 U.S. at 56-57—"bail [is] presumptively available for [an] accused awaiting trial" but is "presumptively unavailable for those convicted awaiting sentence." *Betterman*, 136 S. Ct. at 1614 (comparing 18 U.S.C. 3142(b) and 3143(a)). Thus, under any reasonable construction of Section 3624(e), the entirety of petitioner's post-plea incarceration was (and continues to be) "in connection with a conviction."

2. That result is reinforced by Section 3624(e)'s use of the term "conviction" to refer to an adjudication of

guilt, such as a guilty plea, rather than a formal criminal judgment. As previously noted, see p. 18, *supra*, "the word 'conviction' can mean either the finding of guilt or the entry of a final judgment on that finding." *Deal*, 508 U.S. at 131. Accordingly, although some federal statutes use the term in the narrower sense, others apply the terms "convicted" or "conviction" to refer to a circumstance in which a "guilty plea has been accepted whether or not a final judgment has been entered." *Dickerson* v. *New Banner Inst.*, 460 U.S. 103, 112 n.6 (1983).

That is the meaning of "conviction" in Section 3624(e). To determine what "conviction" means in a particular statute, this Court applies the "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal*, 508 U.S. at 132. Here, context indicates that Section 3624(e)'s tolling provision uses the word "conviction" to refer to an adjudication of guilt.

The text of Section 3624(e) includes not only the term "conviction" but also the term "sentence." See 18 U.S.C. 3624(e) (describing "[a] prisoner whose sentence includes a term of supervised release after imprisonment"). The term "sentence" is typically coextensive with a formal judgment of conviction. See, *e.g.*, Fed. R. Crim. P. 32(k)(1) (requiring that a judgment of conviction set forth the sentence); *Abbott* v. *United States*, 562 U.S. 8, 22 (2010) ("A determination of guilt that yields no sentence is not a judgment of conviction at all.") (citation omitted). The tolling provision's distinct use of the term "conviction" thus indicates that a formal judgment is *not* required. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the

same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted).

That inference is reinforced by the remainder of the Sentencing Reform Act, which repeatedly used the terms "conviction" and "convicted" in reference to a presentence finding of guilt. For example, 18 U.S.C. 3582(d) addresses the sentence that a court may "impos[e] * * * upon a defendant convicted of a [specified] felony," necessarily viewing a "convict[ion]" as a presentencing adjudication of guilt. Similar language appears in the current or original versions of other provisions of the Act. See, *e.g.*, 18 U.S.C. 5037(b) and (c) (providing that a term of probation or official detention for certain juveniles found to be juvenile delinquents may not exceed the maximum term that would be authorized "if the juvenile had been tried and convicted as an adult"); 28 U.S.C. 994(h)(1) (requiring the Sentencing Commission to ensure that the Sentencing Guidelines "specify a sentence to a term of imprisonment at or near the maximum term" for certain categories of defendants who "ha[ve] been convicted of a [specified] felony"); 28 U.S.C. 994(*l*)(1) (requiring the Sentencing Commission to ensure that the Sentencing Guidelines reflect "the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of * * * multiple offenses"); see also Sentencing Reform Act § 239, 98 Stat. 2039 (18 U.S.C. 3551 note) (referring to "imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense").

The Senate Report accompanying the Sentencing Reform Act reflects the same usage. For example, it

characterizes the Act as "an important attempt to reform the manner in which we sentence convicted offenders," thus indicating that Congress believed a defendant would be "convicted" first and "sentence[d]" later. Senate Report 65. Other statements in the report likewise use the words "convicted" and "conviction" to refer to a finding of guilt that precedes sentencing. See, *e.g.*, *id.* at 74 (stating that 18 U.S.C. 3552 "will provide a court with the resources necessary to acquire adequate information about a convicted offender * * * in order to assure a sound basis in fact for the sentencing decision"); *id.* at 119 (stating that 18 U.S.C. 3582(a) would require a court "to consider specified factors prior to the imposition of a sentence of imprisonment in all cases in which a defendant was convicted of a federal offense") (footnote omitted); *id.* at 163 ("Under [28 U.S.C. 994(a)(1)(A)], the [Sentencing G]uidelines are required to provide guidance for the judge in determining whether to sentence a convicted defendant to probation, to pay a fine, or to a term of imprisonment.").

Conversely, where the Sentencing Reform Act refers (or originally referred) to the formal judgment of conviction, or the entry of such a judgment, it employs the more descriptive phrases "judgment of conviction" and "entry of the judgment." See 18 U.S.C. 3562(b) ("judgment of conviction"); 18 U.S.C. 3572(c) (Supp. II 1984) ("judgment of conviction"); 18 U.S.C. 3582(b) ("judgment of conviction"); 18 U.S.C. 3607(a) ("entering a judgment of conviction"); 18 U.S.C. 3613(a) and (b)(1) (Supp. II 1984) ("entry of the judgment"); Sentencing Reform Act § 238(a), 98 Stat. 2037 (repealed) ("entry of the judgment"); Sentencing Reform Act § 238(a), 98 Stat. 2038 (repealed) ("entry of the judgment"). Congress's decision not to use those terms in Section 3624(e) shows

that it considered the guilty plea of a defendant like petitioner to itself be a "conviction." And any subsequent incarceration related to the underlying offense would plainly be "in connection with [the] conviction," thereby tolling a preexisting term of supervised release.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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In The
Supreme Court of the United States

JASON J. MONT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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REPLY BRIEF FOR PETITIONER

The essence of the government's argument relies upon a construct which has no foundation. Pretrial detention is not imprisonment in connection with a conviction. Neither does pretrial detention somehow "morph" into imprisonment merely by virtue of post-sentencing credit for time spent in pretrial detention. Time spent in detention prior to the imposition of a sentence after conviction is a credit to a term of imprisonment, not imprisonment itself. To do so would violate an individual's constitutional rights, for there can be no imprisonment without a sentence imposed. Such credit is no more "imprisonment" than is good time credit awarded for good behavior while in confinement.

Failure to toll the running of a supervised release term set to expire during the time an individual is in official detention is not fatal to the district courts' authority to administer and govern its sentences. Congress solved this jurisdictional dilemma by adding 18 U.S.C. §3583(i) to the supervised release statute. 18 U.S.C. §3583(i) is a tolling provision whereby supervised release is suspended, so long as the district court issues a summons or warrant prior to its expiration. With a warrant in place, the district court controls the timing of the running of supervised release, obviating the need to twist the statutory language of 18 U.S.C. §3624(e) in order to save an expiring release term.

There are no comparable tolling statutes which employ the backward looking analysis implemented by

the Sixth Circuit and those circuits which have adopted its reasoning. Pretrial detention, or official detention, is not the same as being imprisoned after sentencing for a crime. The United States Code in its chapters concerning post-sentence administration and imprisonment are concerned with matters involving the administration of a sentence of imprisonment. They necessarily and specifically do not concern pretrial detention, which occurs prior to a finding beyond a reasonable doubt that the individual has committed a crime. This is important, since it leaves individual defendants possessed of their constitutional due process and trial rights. To permit pretrial detention to "morph" into imprisonment as the Government suggests would be to endorse a system where an individual serves imprisonment before being convicted of his crimes.

A. The Government's Overly-Broad Reading of "In Connection With" Ignores Settled Rules of Statutory Construction.

1. *United States v. Roy Lee Johnson*, which Thwarts the Government's Attempts at Confusing a Straightforward Statute.

The government's strained interpretation of "in connection with" fails to acknowledge the fact that the connecting phrase is preceded by the word "is." This single word provides the statute its "temporal moorings." A good example of the "strict temporal mooring" rule of statutory interpretation may be found in *United States v. Roy Lee Johnson*, 529 U.S. 53 (2000). There

this Court highlighted the requirement to read the statute as written. The statute under review will be "moored to its temporal language," dictating contemporaneity:

> The first sentence of §3624(e) supports our construction. [. . .] The phrase "on the day the person is released," in the second sentence of §3624(e), suggests a strict temporal interpretation, not some fictitious or constructive earlier time. The statute does not say "on the day the person is released or on the earlier day when he should have been released." Indeed, the third sentence admonishes that "supervised release does not run during any period in which the person ***is*** imprisoned.

Roy Lee Johnson, 529 U.S. at 57 (emphasis added). Here that "temporal language" is the word "is." Title 18 U.S.C. §3624(e) says "[a] term of supervised release does not run during any period in which the person *is imprisoned* . . . " not "on the earlier day when the person was held in pretrial detention and given credit after the conviction became final." *Johnson* directly counsels against the government's attempt to justify the Sixth Circuit's backward-looking analysis to find that supervised release was tolled at some earlier time. *Johnson* instead requires us to remain moored to the statute's clear temporal requirements.

The government attempts to further broaden the scope of the statute by calling §3624(e) "capacious," citing cases which treat the phrase "in connection with" broadly. But this attempt at broadening the

interpretation of §3624(e) overlooks the statute's temporal moorings and misapplies settled rules of statutory construction, which require this court to give meaning to all words in a statutory provision. See, *Bailey v. United States*, 516 U.S. 137, 145 (1995).

2. The Language in §3624(e) is Plain and Narrowly Circumscribed.

In *Brown v. Gardner*, 513 U.S. 115 (1994), this Court provided: "We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. '[T]he meaning of statutory language, plain or not, depends on context.'" *Garner*, 513 U.S. at 118, (citing *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991)). In §3624(e), the use of the phrase "in connection with" has little meaning without the phrases "person is imprisoned" and "a conviction" for a crime. Similarly, the purportedly broad reading of "in connection with" used in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71 (2006) and *United States v. American Union Transp., Inc.*, 327 U.S. 437 (1946), [Resp.19], involve contextual interpretations, the former in terms of security and exchange sales, the latter in regard to shipping. In their context, those cases confirm that a broad reading of the term effectuated the congressional purpose. But far from being dispositive, the cases cited by the government only serve to reinforce Petitioner's position regarding using context and language to determine a statute's meaning and scope.

The same may be said for the lower court decisions cited by the government as supporting an expansive reading of "in connection with." Contextual interpretation again lays threadbare the government's analysis. While arguing that it supports a broader reading of the words "in connection with" it actually supports a view that the words "in connection with" must be viewed in light of the words which precede and follow it. For example, in *United States v. Loney*, 219 F.3d 281 (3d Cir.2000), the question involved a Guidelines enhancement for possessing a firearm in connection with another felony offense under U.S.S.G. §2K2.1(b)(5).[1] The Third Circuit found through contextual interpretation that the guideline required a broad reading to give meaning to the language of the subsection. The guideline's purpose of punishing use of firearms in felony offenses would be thwarted with a narrow interpretation of the connection between the firearm and the other felony offense. *Loney*, 219 F.3d at 285-286. Similarly, *United States v. Thompson*, 32 F.3d 1 (1st Cir.1994), the First Circuit found that the term "connection" is defined as having a "causal or logical relation or sequence;" a "reasoned link" between the two connecting terms "firearm" and "another offense." *Id.* at 5-6. Viewed in context of the surrounding language, this is correct. This only means that the phrase "in connection with" must be viewed in light of the words which surround it, not as a call for "capacious" reading

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[1] The Guideline section has been amended since the *Loney* decision. The applicable subsection is now numbered at U.S.S.G. §2K2.1(b)(6)(B).

of the statute. Nothing in 18 U.S.C. §3624 merits such a broad interpretation.

3. By Analogy, Imprisoned as Used in Chapter 229 Supports Mont's Argument

Whether "in connection with" supposes a narrow or broad interpretation hinges upon the words which are precedent and antecedent thereto, as statutory construction rules instruct that language and meaning matter in determining context. The first term, "imprisoned," does not stand alone and thus is not susceptible to meanings unrelated to a conviction for a criminal offense. [Resp.17-18] However, in each instance in §3624, imprisonment has but one meaning: confinement for a specified term after a conviction and sentence. Indeed, Title 18, United States Code, Chapter 229 is entitled "Postsentence Administration:" which naturally would relate to the period after which a sentence for a crime is imposed. Additionally, 18 U.S.C. §3624 is located in Subchapter C, titled "Imprisonment."

In fact, Subchapter C of Chapter 229 includes statutory instructions for when a prisoner who, prior to his release from federal custody, has been charged or indicted for a State felony. It permits transfer of the defendant to an "official detention facility" within the State prior to release from federal custody. 18 U.S.C. §3623. It is therefore evident that, when Congress passed the Sentencing Reform Act Congress was keenly aware of how to identify imprisonment from

official detention. If pretrial, or official detention was intended to be synonymous with a prison term imposed after a conviction, Congress could have included the appropriate language in §3624. In addition, there would be no need for a statute such as 18 U.S.C. §3585, which was enacted to give authority to the Attorney General to calculate a sentence or a method for granting credit for time spent in pretrial, or official detention. For these reasons, official, pretrial detention is not a term of imprisonment, before, during, or after an adjudication of guilt.

4. Re-Imagining the Statute as the Government Contemplates is Inappropriate and Unnecessary

The government's interpretation of 18 U.S.C. §3624(e) amounts to a finding that the phrase "in connection with a conviction" is superfluous. Petitioner states that this interpretation allows for the expansive application of the term "imprisoned" as espoused by the government, the Sixth Circuit and those Circuits which have followed the reasoning in *United States v. Goins*, 516 F.3d 416 (6th Cir.2008).

Petitioner submits that such re-imagining of the statute changes the meaning of the entire provision, a result that is unsupported and unnecessary. That the government would state Congress intended a broad definition of "in connection with" because the "inten[t] [was] not to require a temporal or a causal connection between a conviction and a period of imprisonment,"

[Resp.21] shows a failure to follow the plain language of the statute. It ignores canons of interpretation as acknowledged by the decision of this Court in *Roy Lee Johnson,* which requires the statute be moored to its temporal language.

The Court addressed the same phrase "in connection with" in *Maracich v. Spears*, 570 U.S. 48 (2013), a case relied upon by the government. [Resp.19, 21] There, the Court looked to see if a lawyer who solicited individuals whose identification he obtained from the South Carolina DMV violated the Federal Driver's Privacy Protection Act ("DPPA") of 1994. The attorney used the information based upon one of the exceptions in the DPPA, which permitted use of personal information "for use in connection with any civil, criminal, administrative or arbitral proceeding." *Id.* at 52-55. In defining the parameters of "in connection with" as used in the DPPA, the Court looked to the canon of "noscitur a sociis," an interpretive rule that words and people are known by their companions:

> The phrase "in connection with" is essentially "indeterminat[e]" because connections, like relations, "'stop nowhere.'" *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995). So the phrase "in connection with" provides little guidance without a limiting principle consistent with the structure of the statute and its other provisions. See id., at 656, 115 S.Ct. 1671 ("We simply must go beyond the unhelpful text and the frustrating difficulty of

> defining ['connection with'], and look instead to the objectives of the ERISA statute"); see also *California Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.*, 519 U.S. 316, 335, 117 S.Ct. 832, 136 L.Ed.2d 791 (1997) ("But applying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else.").

Maracich, 570 U.S. at 59-60. Just like this Court's admonition in *United States v. Roy Lee Johnson*, 529 U.S. 53 (2000) to remain moored to the temporal language of the statute, *Maracich* likewise dictates that the words "in connection with" must be interpreted by the words surrounding it.

By its plain reading it is clear Congress intended the phrase "in connection with" to be conditioned by the words which surround it. The phrases surrounding "in connection with" include "is imprisoned" and "a conviction." These phrases in 18 U.S.C. §3624(e) must be read in direct relation to one another. The only way a person may be imprisoned for a Federal, state, or local crime is after a conviction at sentencing. A person who *is detained* is not imprisoned, for there has been no guilt or punishment after guilt is established.

Indeed, in *Barber v. Thomas*, 560 U.S. 474 (2010) this Court addressed a similar phrase "term of imprisonment," when addressing application of good conduct credits required under 18 U.S.C. §3624(b), and making clear that the phrase almost certainly refers to the

sentence imposed, not to the time actually served." *Barber*, 560 U.S. at 483. This makes clear that, by definition, pretrial detention cannot be the functional equivalent of imprisonment.

The *Barber* Court discussed use of the phrase "term of imprisonment" and the two different meanings used in 18 U.S.C. §3624. Either meaning discussed in *Barber* supports Petitioner's interpretation of §3624(e):

> The phrase "term of imprisonment" is just such a phrase. It can refer to the sentence that the judge imposes, see, e.g., § 3624(a) ("A prisoner shall be released" at the end of "the prisoner's term of imprisonment, less any time credited" for good behavior), but it also can refer to the time that the prisoner actually serves. Thus, § 3624(d) of the statute before us requires the BOP to "furnish [a] prisoner with . . . suitable clothing[,] . . . money, . . . and . . . transportation" "[u]pon the release of [the] prisoner on the expiration of the *prisoner's term of imprisonment*." (Emphasis added.) The statute here means to ensure that the prisoner is provided with these necessities at the time of his actual release from prison (sometime during Year 9 in our example), not at the end of the term that the judge imposed (which would be over a year later). Since the statute uses the same phrase "term of imprisonment" in two different ways, the presumption cannot help petitioners here. And, for the reasons we have given, see Part II, supra, context here indicates that the particular

> instance of the phrase "term of imprisonment" at issue refers to prison time actually served rather than the sentence imposed by the judge.

Barber, 560 U.S. at 484-485.

B. United States Code's use of Word "Imprisoned" Informs its Meaning

1. Review of Title 18, United States Code – Imprisoned

There are over 700 instances in Title 18 where the word "imprisoned" is used specifically, as opposed to the word "imprisonment." While the government only referenced one instance in 18 U.S.C. §3041, the other 700-plus instances were part of Congress's definition of the sentence to imposed for a specific statutory offense. Thus under 18 U.S.C. §1344, Bank fraud, the statute proscribed the penalties which attach and states that the person convicted "shall be fined not more than $1,000,000 or *imprisoned* not more than 30 years." 18 U.S.C. §1344 (emphasis added). A common variant on a penalty provisions in Title 18 provide for definite terms of imprisonment as opposed statutory maxima.

Although penalties constitute the bulk of the "imprisoned" references, there are references to "imprisoned" in Title 18 that are important to illuminate the critical flaw in the government's reasoning. In 18 U.S.C. §4002, Congress uses "imprisoned" when referencing federal prisoners in working while in state

custody: "Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are *imprisoned*." (emphasis added). In §4106A, a parole remnant that remains relevant states regarding jurisdiction for appeal: "A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender *is imprisoned* at the time of the determination of such Commission." 18 U.S.C. §4106A(b)(2)(A). And in 18 U.S.C. §4245, Hospitalization of an imprisoned person suffering from mental disease or defect, the statute provides: "If a person serving a sentence of imprisonment objects . . . to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing. . . ."

Use of "imprisoned" in these statutes is in direct support of the reading of 18 U.S.C. §3624(e) by Mont. Further perusal through Title 18 provides additional support, albeit through use of the terms relevant to detention.

The government referenced 18 U.S.C. §3041, as an example where "imprison" was used for pretrial custody. However, the second paragraph of §3041 was amended as a direct result of the passage of the Bail Reform Act and its redefining of pretrial custody as

official detention.[2] In the following statute which discusses authority to hold a person for whom a warrant exists, 18 U.S.C. §3042, Extraterritorial jurisdiction, Congress explains that a person who is a fugitive from justice who either fled prior to trial or after conviction, may be "arrested and detained or conditionally released pursuant to section 3142," pending removal.

C. No Tolling of Time in Official Detention

The purpose of holding an individual in official detention pending trial is to assure the presence of the individual in case of a risk of flight, and to provide for public safety when there is a finding that release of the individual may cause danger to the public. Conversely, the purposes of imprisonment are commonly compartmentalized into four categories: retribution, incapacitation, deterrence and rehabilitation. Petitioner states that the goals of imprisonment cannot be met through pretrial detention, and therefore even after sentencing, time spent in official detention prior to the imposition of the sentence can never equal imprisonment.

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[2] SEC. 204. Chapter 203 of title 18, United States Code, is amended as follows:

(a) The last sentence of section 3041 is amended by striking out "determining to hold the prisoner for trial" and inserting in lieu thereof "determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial." P.L. 98-473 (H.J. Res. 648), Oct. 12, 1984, 98 Stat. 1837.

1. Credits Toward Service of a Sentence Do Not Equal Imprisonment

Credit for time spent in detention prior to sentencing is regularly awarded after sentencing to those individuals whose freedom was limited in order to insure their presence in court and to provide for public safety. This is true both in the state and in Federal courts, where the presiding judge imposes a sentence of imprisonment and provides whether the defendant will receive custody credits. In Petitioner's state of conviction, Ohio judges are mandated to provide for custody credits at sentencing, and under Ohio Rev. Code §2967.191, the Department of Rehabilitation and Correction reduces the prison term for any time spent in confinement arising out of the offense.[3]

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[3] §2967.191 Credit for confinement awaiting trial and commitment

> The department of rehabilitation and correction shall reduce the stated prison term of a prisoner or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term, as determined by the sentencing court under division (B)(2)(f)(i) of section 2929.19 of the Revised Code, and confinement in a juvenile facility. . . .

Petitioner submits that the Bureau of Prisons has been granted similar authority to grant custody credits, both for pretrial detention through arrival at the designated facility for service of the federal sentence. Importantly, the statute which gives the Attorney General, acting through the Bureau of Prisons, authority to grant credit for prior custody, 18 U.S.C. §3585(b), also is instructive as to when a term of imprisonment begins:

> (a) **Commencement** of sentence. – A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

18 U.S.C. §3585(a). Therefore, being imprisoned in connection with a conviction, in the context of federal law, would categorically exclude any period of pretrial detention and detention during the period between an adjudication of guilt and sentencing. In addition to signaling the beginning of a term of imprisonment, 18 U.S.C. §3585 also provides for the granting of credit for prior custody for time spent in official detention prior to the commencement of the sentence, and permits credits for official detention for the offense related to the sentence, and also for other charges where the person was detained after the commission of the offense. See, 18 U.S.C. §3585(b).

The giving of credit toward a sentence of imprisonment as the Attorney General is instructed to do in

18 U.S.C. §3585 is not the only instance where credit against a term of imprisonment is provided. Credits toward service of sentence for satisfactory behavior, better known as "good conduct" credits, have been a part of 18 U.S.C §3624(b) since its inception in the 1984 Sentencing Reform Act. That section permits the Bureau of Prisons to periodically calculate good conduct credits of up to 54 days at the end of each year of imprisonment served. These credits are not "imprisonment," but are awarded much the same way as credits for official detention in §3585(b).

D. Equity Argument and Purposes of Supervised Release

1. Detention does not relinquish duties and responsibilities under supervised release

The essence of the argument presented by the government regarding the purposes of supervised release being unattainable when a person is in official, or pretrial detention, is that the purposes of re-acclimation into society after an extended period of imprisonment, employment assistance, substance abuse counseling and testing, are not available to the detained supervised releasee. Contrary to this notion, a probation officer may continue to supervise a releasee while being held in pretrial detention: more importantly, the supervised releasee must also abide by the rules of the local jail, as any misconduct will serve as an additional violation of the terms and conditions of supervised release.

In *Burns v. United States*, 287 U.S. 216 (1932), the Court had the opportunity to consider whether a probationer who was in the local jail on a different case from that which he was on probation, was amenable to supervision. *Id.* at 219-222. The *Burns* Court determined that a probationer remains under his probation officer's supervision, notwithstanding being held in detention on another matter:

> But, even in jail, he was subject to the conditions of the probation. By its terms, he was to refrain from violation of law and 'in all respects conduct himself as a law-abiding citizen.' As, at the same time that the sentence in question was suspended and probation was granted, he was committed to jail upon a distinct sentence, there was also a condition necessarily implied that he should not be guilty of conduct inconsistent with obedience to that sentence. Abuse of the liberty granted him to leave the jail for a particular purpose, and absenting himself in the circumstances described in his testimony – apart from the question of violation of law (see Act of May 14, 1930, c. 274, s 9, 46 Stat. 325, 327, U.S.C., tit. 18, s 753h (18 USCA s 753h)) – was clearly a breach of that condition, and the court was entitled to take note of it.

Burns, 287 U.S. at 223. Even under supervised release, a person is required to follow the rules of whatever society they are in: that includes the rules and regulations of the local jails and detention facilities. See, 18 U.S.C. §3583(g), which requires mandatory revocation

of supervised release for possession of a controlled substance or refusal to submit to drug testing, and the imposition of a term of imprisonment. Included in the standard conditions under the current day supervised release statute is the requirement to inform the probation officer if one has had an encounter with law enforcement, or an arrest, within a specified period of time, usually 72 hours. This standard condition requires reporting which necessarily requires reporting while detained. Thus, contrary to the government's position, there is regular, and expected compliance with standard and mandatory conditions of supervised release, notwithstanding the fact that the releasee is in jail.

2. No unfair benefit from being jailed while on supervised release

The government endorses its interpretation of §3624(e), making official detention synonymous with imprisonment in connection with a conviction, by arguing that tolling is necessary so that the detained supervised releasee does not gain any "benefit" from his detention, or any advantage over a similarly sentenced person who is not detained during the pendency of the supervised release term. [Resp.27-29] The government's concerns for equity are readily remedied without resorting to transforming a straightforward statute into one which effectively re-writes the statute and transforms detention before sentencing into imprisonment for a conviction which occurred after the official detention.

3. Remedy for alleged inequity in supervised release statute – §3583(i)

The alleged inequity of a supervised releasee benefitting from being detained versus having the release term run during official detention is readily remedied: the district court may issue a warrant or summons for the individual to appear, based upon the clear violations of the terms and conditions of supervised release. See, 18 U.S.C. §3583(i). The issuance of the warrant will "stop the clock" from ticking inexorably forward toward expiration of a term of supervised release, and will allow the district court to control and manage its supervised release judgment order. Indeed, §3583(i) was added to the supervised release statute for this precise reason: it permits a district court to control its own judgment order, instead of relying on factors outside of its control in state and local courts.

By using §3583(i) as intended, the government's identified inequities become non-existent. That section permits delayed revocation of supervised release, allowing a district court to "hold serve" until the local courts have completed their charges. The district court exercises its authority, and is no longer reliant upon a local court which may, or may not grant official detention credit at the time of sentencing: indeed, there may be an extended detention, and the individual may be acquitted or the charges dropped.[4] By using

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[4] In a Study completed by the Bureau of Justice Statistics, 22% of individuals charged with state felony charges in the United States who were held in pretrial detention were released either by acquittal or dropped charges. The average amount of

18 U.S.C. §3583(i), as Congress intended, no "backward-looking" application of 18 U.S.C. §3624(e) need be contemplated.

Use of the statutory authority granted under 18 U.S.C. §3583(i) also solves the government's perceived disparity in sentences. The argument, that a supervised releasee who is held in detention receives a "benefit" because he is detained and has less of an opportunity to violate the conditions of supervised release, thus unfair to the other, non-detained supervised releasee, is novel. Defendants are individuals, not interchangeable widgets in a machine: thus each person will experience their own manner of service of a sentence imposed, even if those sentences are exactly the same in lengths of imprisonment and supervised release. There are no guarantees that those two individuals will share the same experiences, serve their sentences under the same custody level, receive good conduct credits at the same or equal rates, or serve their supervised release judgment identically. This fictitious "disparity" is no reason to find that §3624(e)'s use of the phrase, "is imprisoned in connection with a conviction," includes pretrial, official detention.

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time spent in detention prior to release was 45 days. See, Thomas H. Cohen and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts: State Court Processing Statistics, 1990-2004;" *Special Report* (NCJ 214994), November 2007, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, available at: http://bjs.ojp.usdoj.gov/content/pub/pdf/prfdsc.pdf.

E. Backward-Looking Tolling Inapplicable Regardless of When an Adjudication of Guilt Occurs

1. No Analogous Tolling Statute

In its attempt to find an example of a tolling statute which applies tolling to events which have already occurred, the government cites a statute located in Chapter 213, the Limitations chapter of Title 18, which provides the method for the United States to use when it requires suspension of the statute of limitations while waiting to obtain evidence from a foreign country, 18 U.S.C. §3292. The government alleges that the tolling under this statute is backward looking, because the district court who receives the application from the government, has 30 days to rule on the request to suspend the running of the statute of limitations. See, 18 U.S.C. §3292(a)(2). [Resp.33]

The analysis espoused by the government is not analogous to the backward looking exercise displayed in Petitioner's case, and is in fact not a backward application of tolling of the limitations period. The application under §3292 is made prior to the expiration of the statute of limitations for the crime being presented before the grand jury. The district court then has a limited, 30-day period within which to rule on the requested suspension. These time frames are wholly inapposite to the backward analysis employed in Petitioner's case, as not only did the Sixth Circuit look back to a detention to toll the running of the release term, the looking back also changed the nature of the detention from being held to insure presence and safety, to

being held as punishment for a crime for which neither guilt nor penalty had been established.

2. 18 U.S.C. §3583(i) Intended for Precisely these Instances

A better analogy to the time frame included in the limitations statute cited by the government would be a comparison to 18 U.S.C. §3583(i), where a district court is provided a violation report by the United States probation officer indicating that a supervised release violation has occurred, and provides the status of the defendant under supervision. Armed with that violation report, like the application referenced in §3292(a)(1), the district court issues a warrant, likely within a reasonable time similar to the 30-day limit in §3292(a)(2), thus suspending the running of the supervised release term, just as the statute of limitation would be suspended while awaiting the foreign evidence sought by the government. In this respect, the government's reference to the limitations statute is applicable to this case, and the failure of the district court to exercise its power to suspend, or toll the release term under 18 U.S.C. §3583(i).

The government's citation to *United States v. Trainor*, 376 F.3d 1325 (11th Cir.2004) misinterprets that case in a significant respect. Where the government states that the tolling order was refused after an official request, [Resp.34], the decision in *Trainor* states that the tolling request was granted by the district court: however, when the defendant challenged the

order suspending the statute of limitations based upon the insufficient evidentiary support provided by the government in the initial application, the district court hearing the criminal case agreed and dismissed the charges that were time barred. *Trainor*, 376 F.3d at 1328-1329. Therefore, *Trainor* provides no support for a backward tolling analysis.

F. Petitioner's Supervised Release Term Expired Prior to Any Preservation or Suspension by District Court

Petitioner's supervised release expired on March 6, 2017. Petitioner was sentenced for the State law offenses for which he was held in detention on March 21, 2017. No warrant or summons was issued by the district court in his case until March 30, 2017. Petitioner submits that the record of the district court indicates that no warrant or summons was filed at any point during Petitioner's pretrial detention, either before the adjudication of guilt or before the expiration of the supervised release term. These facts, provable by the record in this case, indicate that there was no tolling or suspension of supervised release under 18 U.S.C. §3583(i), or under 18 U.S.C. §3624(e).

1. Definition of "Conviction" in Conjunction with "Imprisoned" – Context

The government has made the alternative argument that after Petitioner entered a guilty plea in state court, the time spent in detention became

imprisonment in connection with a conviction, as the term "conviction" means an adjudication of guilt. [Resp.39-41] Petitioner submits that whether a conviction occurs at the time guilt is established is not dispositive to application of §3624(e), as the statute's tense dictates that a person "is imprisoned" in connection with a conviction, and there is no imprisonment until an individual is sentenced. If this period of detention was synonymous with imprisonment, credit for time served in detention under 18 U.S.C. §3585 would amount to double counting of sentence credits, good conduct credits under §3624(b) would be affected, and the Guidelines would have to take the period of post plea detention into account when calculating a guideline range, etc. The government's timing of conviction argument ignores the necessity of the service of imprisonment and the imposition of a term of imprisonment as punishment for the offense of conviction, all of which, as has been discussed herein and in Petitioner's Merit Brief, is not synonymous with pretrial detention.

2. Instanced in Titles 18 and 28 where "Imprisoned" Used – and Language Relating to Detention

Use of the time held in detention between adjudication of guilt and sentencing as promoted by the government also causes conflict with other provisions of Title 18 and in Title 28. Title 18, United States Code §3731 dictates when the United States may bring an appeal as against a defendant, so as to not do assault to a defendant's right not to be twice placed in jeopardy

of his freedom through a second prosecution. Which is why an acquittal is not appealable, on its own, by the government. However, the government is permitted to appeal a decision granting the release of a person charged with, or convicted of an offense, or denying a motion for revocation of a decision or order granting release. If a conviction signaled a final conviction and the subsequent detention amounted to being "imprisoned in connection with a conviction," the government would not be able to appeal a ruling regarding detention, or lack thereof, by a defendant. See also 18 U.S.C. §3145(c), which clarified that either party may have a limited appeal to a decision under the Bail Reform Act.

Title 28 has additional provisions which a defendant in official detention after a plea or verdict would be unable to avail themselves of, should the government's argument rule the day. A person must be "in custody under a sentence of a court established by an Act of Congress" under 28 U.S.C. §2255(a). The custody requirement is also applicable to state law habeas petitioners under 28 U.S.C. §2254(a). For these very important reasons, a conviction, without a term of imprisonment imposed, is not "imprisoned in connection with a conviction" for a crime.

CONCLUSION

For the foregoing reasons and for the reasons in Petitioner's Merit Brief, the Sixth Circuit Court of Appeals opinion should be reversed.

Respectfully submitted,

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